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April 16, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China

I. Summary

We analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China) covering the period of review (POR) November 1, 2015, through October 31, 2016. We did not make changes in the margins as a result of our analysis. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum. Below is a complete list of the issues for which we have received comments and rebuttal comments from the interested parties:

Comment 1: Application of AFA to Chengdu Huifeng New Material Technology Co., Ltd.
Comment 2: Application of AFA to the Jiangsu Fengtai Single Entity
Comment 3: Selection of the AFA Rate
Comment 4: Selection of the Separate Rate for Non-Selected Respondents

II. Background

On December 6, 2017, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades from China.[1] We invited interested parties to comment on the *Preliminary Results*. We received

[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57585 (December 6, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

case[2] and rebuttal[3] briefs from various parties to this administrative review. We also published the final results of the changed circumstances review with respect to Chengdu Huifeng.[4]

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[5] We also extended the deadline for the final results of this administrative review to Monday, April 16, 2018.[6]

III. Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semi-finished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

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[2] *See* the case briefs filed by Bosun Tools Co., Ltd. (Bosun) dated January 12, 2018, Chengdu Huifeng New Material Technology Co., Ltd. (Chengdu Huifeng) dated January 12, 2018, the Jiangsu Fengtai Single Entity dated January 12, 2018, Saint-Gobain Abrasives (Shanghai) Co. Ltd. (Saint-Gobain) dated January 12, 2018, and Danyang Huachang Diamond Tools Manufacturing Co., Ltd., (Danyang Huachang) et al. dated January 12, 2018. Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Fengtai Sawing Industry Co., Ltd., comprise the Jiangsu Fengtai Single Entity. *See Preliminary Results*, 82 FR at 57585 n.9, and accompanying Preliminary Decision Memorandum at 2, n.5.
[3] *See* the petitioner's rebuttal brief dated January 18, 2018. The petitioner is Diamond Sawblades Manufacturers' Coalition.
[4] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 82 FR 60177 (December 19, 2017). In this changed circumstances review, Commerce determined that Chengdu Huifeng New Material Technology Co., Ltd. is the successor-in-interest to Chengdu Huifeng Diamond Tools Co., Ltd, for which we initiated this administrative review.
[5] *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018.
[6] *See* Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated April 9, 2018.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, Commerce included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by U.S. Customs and Border Protection.[7]

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

IV. Discussion of the Issues

Comment 1: Application of AFA to Chengdu Huifeng New Material Technology Co., Ltd.

Background

After having given Chengdu Huifeng 35 days and 51 days to file a complete section A response and a complete sections C and D response, respectively, to our initial questionnaire issued on April 26, 2017,[8] Commerce issued the second supplemental questionnaire to Chengdu Huifeng on September 5, 2017, and requested that Chengdu Huifeng respond to this second supplemental questionnaire by September 19, 2017. In response to Chengdu Huifeng's request for an extension to file its second supplemental response, Commerce granted the request, in part, and extended the deadline to Friday, September 22, 2017.

In accordance with 19 CFR 351.303(c), Chengdu Huifeng filed its second supplemental response with bracketing not finalized prior to the deadline on September 22, 2017, and the business proprietary version of its second supplemental response with bracketing finalized prior to the deadline on Monday, September 25, 2017. However, on September 25, 2017, Chengdu Huifeng filed the exhibits of the public version of its second supplemental response but did not file the narrative portion of the public version or its cover letter.[9] In accordance with 19 CFR 351.303(c)(2)(iii), Chengdu Huifeng was required to file the public version simultaneously with the final business proprietary document.

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[7] *See Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128 (December 6, 2011).

[8] *See* the initial questionnaire dated April 26, 2017, and Commerce's extension grant letters to Chengdu Huifeng dated May 15, 2017, and May 31, 2017.

[9] In the second supplemental questionnaire, Commerce specifically requested Chengdu Huifeng to "…, as required under 19 CFR 351.301(b), please identify on the cover letter of your supplemental response the subsection of 19 CFR 351.102(b)(21) under which you are submitting your supplemental response." Also, 19 CFR 351.304 allows interested parties that submit factual information to Commerce in connection with a proceeding to request that Commerce "treat any part of the submission as business proprietary information that is subject to disclosure only under an administrative protective order." *See* 19 CFR 351. 304(a)(1)(i). Interested parties normally request business proprietary treatment of certain information in the cover letters of their submissions. Chengdu Huifeng requested business proprietary treatment for parts of its initial and supplemental responses in the cover letters of its responses. *See* Chengdu Huifeng's section A response dated June 1, 2017, sections C and D response dated June 19, 2017, and first supplemental response dated July 15, 2017.

Before the filing deadline of September 25, 2017, under 19 CFR 351.303(c)(2)(iii), Chengdu Huifeng did not request an extension for filing the public version of its second supplemental response. On Wednesday, September 27, 2017, Chengdu Huifeng filed the complete public version of its second supplemental response with the cover letter, narrative portion, and exhibits. Although Chengdu Huifeng filed the business proprietary version of its second supplemental response within the deadline, its public version was filed after the deadline. Because Chengdu Huifeng did not comply with the requirements for filing under 19 CFR 351.303(c)(2)(iii), Commerce found that Chengdu Huifeng filed its second supplemental response in an untimely manner. Accordingly, on October 3, 2017, Commerce rejected and removed from Chengdu's second supplemental response from ACCESS in accordance with 19 CFR 351.104(a)(2)(iii).[10]

On October 6, 2017, Chengdu Huifeng filed a request for reconsideration of Commerce's rejection of the second supplemental response.[11] In response, on November 1, 2017, Commerce denied Chengdu Huifeng's request.[12] For the *Preliminary Results*, Commerce applied a rate based on adverse facts available (AFA) to Chengdu Huifeng.

Parties' Comments

Chengdu Huifeng argues that its failure to submit a complete public version before the established deadline was a minor compliance failure that was nothing more than an inadvertent omission and that the consequence of this filing failure is too severe and unjust. Chengdu Huifeng states that section 776(a) of the Tariff Act of 1930, as amended (the Act), allows Commerce to use facts otherwise available against a party that meets any of the four conditions specified in section 776(a)(2) of the Act. Then, according to Chengdu Huifeng, section 776(b) of the Act requires Commerce to find whether a party failed to cooperate by not acting to the best of its ability to comply Commerce's request for information before drawing adverse inferences. Chengdu Huifeng explains that adverse inferences are not automatic and, to be supported by substantial evidence, Commerce has an obligation to articulate clearly how it concluded that a party's failure to act to the best of its ability is more than inadvertent omission.[13] Chengdu Huifeng contends that Commerce must analyze a deficient response in light of the respondent's overall conduct, the importance of the information, the particular time pressures of the proceeding, and any other information that bears on the issue of whether the deficiency was an excusable inadvertence or a demonstration of a lack of regard for its responsibilities in a proceeding. Chengdu Huifeng states that, even when an application of AFA is justified, Commerce has to balance the statutory objective of finding an accurate dumping margin with the goal of inducing compliance without creating overly punitive results.[14]

Chengdu Huifeng explains that its failure to submit the cover letter and narrative portion of the public version of the second supplemental response was inadvertent, not intentional or with any

[10] *See* Commerce's rejection letter to Chengdu Huifeng dated October 3, 2017.
[11] *See* Chengdu Huifeng's reconsideration request dated October 6, 2017.
[12] *See* Commerce's letter denying the reconsideration request dated November 1, 2017.
[13] *See* Chengdu Huifeng's case brief at 3, citing *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221, 1246 (CIT 1998), *Allegheny Ludlum Corp. v. United States*, 215 F. Supp. 2d 1322, 1341 (CIT 2000), and *Mannesmannrohren-Werke AG et al. v. United States*, 77 F. Supp. 2d 1302, 1314 (CIT 1999).
[14] *Id*. at 3-4, citing, *e.g.*, *Chia Far Indus. Factory Co., Ltd. v. United States*, 343 F. Supp. 2d 1344, 1366 (CIT 2004).

lack of disregard for its responsibilities in this administrative review. Chengdu Huifeng states that, once Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) notified Chengdu Huifeng of the missing cover letter and narrative portion of the public version, Chengdu Huifeng immediately rectified the omission and filed a complete public version of the second supplemental response on September 27, 2017.

Chengdu Huifeng contends that, because Commerce's rejection of the second supplemental response ignores Commerce's regulatory discretion to extend any time limit for good cause shown under 19 CFR 351.302(b), Commerce's rejection of the second supplemental response and denial of Chengdu Huifeng's request for reconsideration for good cause constitute an abuse of administrative discretion. Chengdu Huifeng argues that Commerce's preliminary application of AFA to Chengdu Huifeng is unsupported by substantial evidence.

Chengdu Huifeng claims that Commerce's discretion in establishing deadlines must be reasonable in light of its statutory obligation to determine margins as accurately as possible and a non-statutory deadline must be waived if it would amount to an abuse of discretion.[15] Chengdu Huifeng explains that Commerce must weigh the burden imposed upon itself with the acceptance of the late submission and the need for finality at the final results of this administrative review and exercise discretion in the establishments, extension, and enforcement of deadlines for the submission of the second supplemental response.[16] Chengdu Huifeng contends that Commerce abused its discretion by not taking into account the burden of accepting the late submission of the second supplemental response versus the severe and disproportionate effect of the rejection of the second supplemental response on Chengdu Huifeng. Chengdu Huifeng explains that U.S. Court of International Trade (CIT) held that there can be exceptions to rejections of submissions under 19 CFR 351.302(d).[17] Chengdu Huifeng contends that Commerce abused its discretion also by not considering Chengdu Huifeng's explanation and whether an exception is appropriate in this case.

Chengdu Huifeng claims that its corrected public version prejudiced no other interested parties because it timely filed the proprietary version of the second supplemental response and timely served the proprietary and public versions of the second supplemental response upon all interested parties. Chengdu Huifeng argues that neither Commerce analysts nor the petitioner notified Chengdu Huifeng that the public version filed on September 25, 2017, is missing the cover letter and narrative portion and only an ACCESS personnel noticed the omission and directed Chengdu Huifeng to resubmit a complete public version.

Chengdu Huifeng contends that the information necessary for the calculation of a margin was in the proprietary version of the second supplemental response and the public version was necessary only for purposes of transparency to the public and allowing parties not under the administrative protective order in this administrative review to participate meaningfully in the

[15] *Id*. at 9, citing *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1207 (Fed. Cir. 1995), *Dupont Teijin Films v. United State*s, 931 F. Supp. 2d 1297 (CIT 2013) (*Dupont Teijin*), and *Wuhu Fenglian Co. v. United States*, 836 F. Supp. 2d 1398, 1403 (CIT 2012) (*Wuhu Fenglian*).
[16] *Id*., citing *Grobest & I-Mei Indus. (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342, 1365 (CIT 2012) (*Grobest*), and Artisan *Mfg. Corp. v. United States*, 978 F. Supp. 2d 1334, 1342 (CIT 2014) (*Artisan*).
[17] *Id*. at 10, citing *Kirovo-Chepetsky Khimichesky Kombinat, JSC v. United States*, 58 F. Supp. 3d 1397, 1411 (CIT 2015) (*Kirovo-Chepetsky*).

proceeding. Chengdu Huifeng argues that, because all interested parties in this administrative review were served with the complete public version by the established due date, the two-day delay in Chengdu Huifeng's submission of the complete public version had no effect on any party in this administrative review and only *de minimis* effect on the public.

Moreover, Chengdu Huifeng argues that, because it filed the exhibits to its public version before 5:00 p.m. Eastern Time on the established due date, Commerce's warning issued to Chengdu Huifeng's counsel about a prior antidumping duty proceeding in which an initial filing was made after 5:00 p.m. Eastern Time deadline is inapplicable to this case. Chengdu Huifeng states that, in another separate investigation, a respondent filed its proprietary section D response with 19 pages missing from the narrative response but, only one day after the rejection of Chengdu Huifeng's second supplemental response, Commerce declined to reject that section D response and requested that respondent resubmit a corrected section D response. Chengdu Huifeng contends that the application of AFA for a minor compliance failure is extremely severe and unjust.

The petitioner argues that Commerce's rejection of the second supplemental response is consistent with Commerce's regulations, pursuant to which Commerce grants timely filed extension requests if good causes are shown and considers untimely filed extension requests only when extraordinary circumstances exist. In addition, the petitioner argues that Commerce has made clear that, to be considered timely filed, a submission must be received by Commerce in its entirety by the established deadline. The petitioner explains that Chengdu Huifeng filed its second supplemental response in an untimely manner without a timely extension request and without an extraordinary circumstance. The petitioner asserts that the U.S. Court of Appeals for the Federal Circuit (CAFC) held that Commerce must be allowed to enforce its regulatory timeframe in order to administer the antidumping duty law and calculate accurate dumping margins and that Commerce has the discretion to reject a late submission from a party that fails to meet a deadline and does not demonstrate why it could not request an extension in a timely manner.[18]

The petitioner distinguishes cases cited by Chengdu Huifeng as precedents against the rejection of the second supplemental response. Specifically, the petitioner contends that *Grobest* and *Artisan* do not involve a supplemental response from an individually examined respondent and, instead, dealt with the untimely submission of a separate rate certification and quantity-and-value response, respectively, from a separate rate applicant. The petitioner explains that cases such as *Dupont Teijin* and *Wuhu Fenglian* pertain to Commerce's ability to deprive parties of an opportunity to submit information on a particular issue. The petitioner explains further that *Kirovo Chepetsky* affirmed Commerce's rejection of untimely filed factual information.

The petitioner claims that Chengdu Huifeng has not demonstrated that Commerce improperly rejected the second supplemental response. The petitioner states that Commerce fully considered Chengdu Huifeng's request for reconsideration and recognized Chengdu Huifeng's argument that the untimely submission was an inadvertent error, but nonetheless concluded that the circumstances did not warrant acceptance of the untimely filed second supplemental response.

[18] *See* the petitioner's case brief at 10, citing *Dongtai Peak Honey Indus. v. United States*, 777 F.3d 1343, 1351 (Fed. Cir. 2015) (*Dongtai Peak I*).

The petitioner argues that *Dongtai Peak I* held that Commerce should not be burdened by requiring acceptance of untimely submissions, especially where such submissions are lengthy and contain substantial amounts of information of particular importance to Commerce's determination. The petitioner explains that *Dongtai Peak I* was similar to this case in that, in *Dongtai Peak I*, the submission consisted of nine pages of questions and was due less than four months before the preliminary determination and, in this case, the second supplemental response was of similar length with substantial amounts of critical information and was due approximately two months before the *Preliminary Results*.

The petitioner argues that, because Chengdu Huifeng was aware of the consequence of an untimely submission of the second supplemental response from the cover letter of the second supplemental questionnaire, Chengdu Huifeng's failure to timely submit the second supplemental response warrants the application of AFA. The petitioner states that *Dongtai Peak I* held that, where a respondent was aware of the deadline and had an opportunity to request an extension before the deadline, the respondent's failure to do so indicates an inattentiveness or carelessness and warrants application of AFA.

<u>Commerce's Position</u>: For the final results of this administrative review, we continue to reject Chengdu Huifeng's untimely filed second supplemental response and apply AFA to Chengdu Huifeng. We disagree with Chengdu Huifeng that our rejection of its second supplemental response is arbitrary or an abuse of discretion.

Pursuant to 19 CFR 351.303(b)(1), "{a}n electronically filed document must be received successfully in its entirety by {Commerce's} electronic records system, ACCESS, by 5 p.m. Eastern Time on the due date." However, in this administrative review, Chengdu Huifeng only partially filed its second supplemental response by the established deadline, omitting the cover letter and narrative portion in the public version of the second supplemental response. Chengdu Huifeng did not contact a Commerce official and/or request an extension before the filing deadline. As explained in our denial of Chengdu Huifeng's reconsideration request, Chengdu Huifeng received a confirmation e-mail from ACCESS concerning its incomplete electronic submission date-stamped September 25, 2017, at 4:05:19 pm.[19] This confirmation e-mail shows that the complete submission had not been properly uploaded.[20] Chengdu Huifeng could have filed either the complete public version or an extension request within the deadline but did not do so. A failure of this nature could have been prevented if Chengdu Huifeng were sufficiently attentive to the filing results.[21] Inattentiveness does not constitute an extraordinary circumstance,[22] which is "an unexpected event" that "{c}ould not have been prevented if reasonable measures had been taken" and "{p}recludes a party or its representative from timely

[19] *See* Commerce's denial of reconsideration request dated November 1, 2017. *See also* Chengdu Huifeng's reconsideration request dated October 6, 2017, at Attachment 1.
[20] *See* Commerce's denial of reconsideration request dated November 1, 2017.
[21] *See Antidumping Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value, and Final Affirmative Determination of Critical Circumstances*, 82 FR 8399 (January 25, 2017) (*Silica Fabric*), and accompanying Issues and Decision Memorandum (I&D Memo) at Comment 6.
[22] *See Extension of Time Limits*, 78 FR 57790, 57793 (September 20, 2013).

filing an extension request through all reasonable means."[23] Such inattentiveness or carelessness supports the application of AFA because, as explained above, Chengdu Huifeng was aware of the deadline and had the opportunity to either resubmit the complete public version of the second supplemental response or request an extension of the deadline before the expiration of the deadline, but did not do either before the deadline.[24]

Chengdu Huifeng is familiar with the regulatory procedures for requesting an extension request, as evidenced by Chengdu Huifeng's prior extension requests for its second supplemental response and other responses, which we granted either in full or in part.[25] However, after the September 25, 2017, incomplete filing of the public version of its second supplemental response, but before the expiration of the time limit, Chengdu Huifeng did not request an extension of the September 25, 2017, deadline, either in writing or otherwise.[26] The ACCESS personnel's e-mail request to re-file was a default response to an incomplete filing, not an implicit extension of the deadline to submit the second supplemental response under 19 CFR 351.302(c).[27] Further, the e-mail request to re-file did not state or imply that the submission would be considered timely upon re-filing.[28]

There is a general prejudice stemming from late submissions, because of the strict statutory deadlines governing our decisions.[29] Parties' adherence to our administrative deadlines is necessary for us to provide all interested parties with a reasonable timeframe in which to submit information and for us to complete the administrative review within the statutory deadline specified in section 751(a)(3)(A) of the Act.[30] Therefore, because we needed to complete the preliminary and final results of this administrative review within the statutory timeframe, we properly applied our discretion in rejecting Chengdu Huifeng's untimely filed second supplemental response.[31] Although we have the discretion to extend deadlines for good cause shown, Chengdu Huifeng did not provide good cause for extending the deadline for its second supplemental response. As explained above, before the deadline, Chengdu Huifeng was aware of the deadline and its failure to submit a complete second supplemental response, but it did not do anything to remedy its failure before the expiration of the deadline.

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[23] *See* 19 CFR 351.302(c)(2)(i)-(ii). *See also* Commerce's denial of Chengdu Huifeng's reconsideration request dated November 1, 2017, at 2.
[24] *See Dongtai Peak I*, 777 F.3d at 1355-56 ("Because Dongtai Peak was aware of the deadline and had the opportunity to file an extension request prior to its expiration, its failure to do so indicates an inattentiveness or carelessness with regard to its obligations. This warranted application of AFA.").
[25] *See, e.g.*, Chengdu Huifeng's extension requests dated July 5, 2017, July 13, 2017, and September 18, 2017.
[26] *See* Commerce's denial of Chengdu Huifeng's reconsideration request dated November 1, 2017, at 2.
[27] *Id*.
[28] *Id*.
[29] *See Neo Solar Power Corp. v. United States*, 190 F. Supp. 3d 1255, 1262-63 (CIT 2016) (*Neo Solar*).
[30] *See Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part*, 75 FR 10207 (March 5, 2010), and accompanying I&D Memo at Comment 1 (*CTL Plate*), *aff'd Hyosung Corp. v. United States*, Court No. 10-00114, slip op. 11-34 (Ct. Int'l Trade Mar. 31, 2011) (*Hyosung Corp.*).
[31] *See Neo Solar*, 190 F. Supp. 3d at 1263 ("Given the facts of this case and Commerce's need to timely begin the process of respondent selection without waiting for late review requests, the claim of abuse of discretion fails. Commerce, therefore, reasonably declined to grant NSP's extension request and reasonably refused to accept NSP's review request.").

We do not find that our burden of accepting Chengdu Huifeng's second supplemental response is disproportionate to the AFA rate assigned to Chengdu Huifeng. As explained above, our regulations require that documents be received in their entirety by the applicable deadline. Commerce establishes deadlines so that it can conduct proceedings in an efficient manner within its statutory and regulatory deadlines. Therefore, it is critical that parties file documents by the established deadline or timely request an extension of such a deadline. Timely filings and timely extension requests contribute to Commerce's efficient administration of the numerous cases before it and the antidumping duty laws. Conversely, untimely filings and untimely extension requests hinder the efficient and timely conduct of our proceedings, and lead to Commerce spending additional time and resources to address such untimely filings and requests. Additionally, although the burden associated with a single late-filed questionnaire response may be perceived as minimal, that burden is not minimal when aggregated across all proceedings. Accordingly, for the efficient conduct of Commerce's proceedings, it is critical that parties adhere to the deadlines established by Commerce.[32]

In *Neo Solar*, the CIT upheld Commerce's rejection of an untimely filed review request because the requestor made various errors, which include the requestor's failures to plan for contingencies and call for help on the due date.[33] For the same reasons, Commerce rejected an untimely filed Q&V response in *Silica Fabric*.[34]

Chengdu Huifeng's reliance on *Grobest* is misplaced. In *Grobest*, the CIT overturned our rejection of an untimely filed separate rate certification because the respondent at issue was eligible for a separate rate in all prior segments of the proceeding and would have been eligible again if it filed the separate rate certification in a timely manner and the burden of analysis of the separate rate certifications was minimal in the past.[35] In other words, in *Grobest*, the main issue was the separate rate eligibility and the amount of information that needed to be analyzed to renew the respondent's separate rate eligibility. In this review, Chengdu Huifeng continues to be eligible for a separate rate and its separate rate eligibility is not an issue. However, Chengdu Huifeng failed to respond in a timely manner to our second supplemental questionnaire, which contains 49 questions in eight pages.[36] The extensive size of the second supplemental questionnaire and the time needed to analyze the second supplemental response are additional reasons why the burden of accepting Chengdu Huifeng's untimely filed response would not have been minuscule.[37] Also, we are not required to accept an untimely filed response on the basis that such untimely filed document would have contained information relevant to a margin calculation.[38] For example, the CAFC held that evidence Commerce rejected in a proper

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[32] *See Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 43991 (July 6, 2016) (*OBA*), and accompanying I&D Memo at Comment 2.
[33] *See Neo Solar*, 190 F. Supp. 3d at 1262.
[34] *See Silica Fabric* and accompanying I&D Memo at Comment 6.
[35] *See Grobest*, 815 F. Supp. 2d at 1366-67.
[36] *See* Commerce's second supplemental questionnaire to Chengdu Huifeng dated September 5, 2017.
[37] *See Dongtai Peak Honey Industry Co., Ltd. v. United States*, 971 F. Supp. 2d 1234, 1241 (CIT 2014) (*Dongtai Peak II*), in which the CIT held that the burden of accepting an untimely filed response to a nine-page supplemental questionnaire "would not have been 'minuscule'" as was in *Grobest*.
[38] *Id.* ("Although Peak's {supplemental response} would have contained information relevant to the dumping

administrative procedure was properly excluded even if the court believes that the excluded evidence, if accepted and considered, would have yielded a more accurate result.[39]

Artisan is also distinguishable from Chengdu Huifeng's situation in this review. In *Artisan*, an untimely filed quantity-and-value response was accompanied by a separate one-day extension request at the same time.[40] In this review, Chengdu Huifeng filed is second supplemental response in an untimely manner with no extension request at all. Further, in *Artisan*, the CIT, quoting *Nippon Steel*, held that "the statutory mandate that a respondent act to 'the best of its ability' requires the respondent to do the maximum it is able to do"[41] and that Commerce's discretion to "'use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available' applies when a party fails to meet this standard."[42] Chengdu Huifeng, however, failed to submit the complete public version or request an extension of the deadline before the expiration of the deadline. Therefore, we find that Chengdu Huifeng did not put forth its maximum effort to ensure a complete and accurate submission.[43]

As discussed above, the facts of the current proceeding are distinct from those in *Artisan* and *Grobest*; instead they are similar to those in *Dongtai Peak I.* In *Dongtai Peak I,* the CAFC concluded that Commerce properly exercised its discretion in rejecting the respondent's untimely filed extension requests and untimely filed supplemental questionnaire response despite the respondent's claim that it encountered debilitating computer system malfunctions and difficulties in overseas communication between the rurally-located respondent and its U.S. based counsel.[44] In *Dongtai Peak I,* the CAFC also concluded that Commerce reasonably determined that the respondent was capable of at least submitting an extension request on time, but simply failed to do so and, therefore, found that good cause did not exist to extend the deadline retroactively.[45] Here, had Chengdu Huifeng reviewed the confirmation notice for its submission, it would have known of its failure to submit the complete second supplemental response within the deadline and would have had time to either submit the complete second supplemental response or request an extension of deadline before the expiration of the deadline. As in *Dongtai Peak I*, the untimely filed second supplemental response was a response to our request for vital information. The second supplemental questionnaire contains requests for information for various aspects of U.S. sales of subject merchandise and FOPs used in the production of subject merchandise.[46] Finally, as in *Dongtai Peak I,* our rejection of the untimely-filed second supplemental response does not violate Chengdu Huifeng's due process rights because Chengdu Huifeng had notice of

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margin determination, Commerce was not required to place it on the record.").

[39] *Id*. *See also PSC VSMPO-Avisma Corp. v. United States*, 688 F.3d 751, 761 (Fed. Cir. 2014) ("A court cannot set aside application of a proper administrative procedure because it believes that properly excluded evidence would yield a more accurate result if the evidence were considered.").
United States Court of Appeals, Federal Circuit.

[40] *See Artisan*, 978 F. Supp. 2d at 1336.

[41] *Id.* at 1342, quoting *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

[42] *See Artisan*, 978 F. Supp. 2d at 1342.

[43] *See OBA* and accompanying I&D Memo at Comment 2.

[44] *See Dongtai Peak I*, 777 F.3d at 1350-53.

[45] *Id.* at 1352 ("Thus, Commerce reasonably determined Dongtai Peak was entirely capable of at least submitting an extension request on time, but simply failed to do so; therefore, good cause did not exist to retroactively extend the deadline.").

[46] *See* Commerce's second supplemental questionnaire to Chengdu Huifeng dated September 5, 2017.

the deadline and the opportunity to timely respond to our questionnaire or file a timely request for an extension.[47]

A party may request an extension before the applicable time limit expires. An untimely-filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists.[48] As explained above, an "extraordinary circumstance" is an unexpected event that could not have been prevented if reasonable measures had been taken, and that precludes a party or its representative from timely filing an extension request through all reasonable means.[49] Our current regulations concerning time limits for the submission of factual information and acceptance of untimely extension requests are designed to establish specific deadlines depending on the category of factual information being provided.[50] These regulations are intended to ensure that Commerce has sufficient time to review and analyze factual information "at the appropriate stage in the proceeding," and before "it is too late {for Commerce} to adequately examine, analyze, conduct follow-up inquiries regarding, and if necessary, verify the information."[51] Also, 19 CFR 351.302(c) makes it clear that untimely filed extension requests would be accepted only in "extraordinary circumstances." Our current regulations demonstrate that Commerce intended to establish concrete deadlines, and that those deadlines must be observed. The current regulations concerning deadlines and extension requests were applicable in the instant administrative review and these regulations took effect after *Artisan* and *Grobest*.[52]

In this administrative review, we rejected Chengdu Huifeng's second supplemental response because it was filed in an untimely manner and without an extension request demonstrating extraordinary circumstances. As we explained in the *Preliminary Results*, because necessary information is missing from the record and Chengdu Huifeng withheld and failed to provide the requested information by the established deadline, we continue to apply facts available pursuant to sections 776(a)(1) and (a)(2)(A)-(B) of the Act.[53] Chengdu Huifeng failed to cooperate by not acting to the best of its ability to comply with our requests for information by failing to provide requested information necessary for us to calculate a margin in a timely manner. Chengdu Huifeng's failure to provide the requested information left a wide range of the information that it placed on the record of this review unreliable for our calculation of a preliminary margin.[54]

Therefore, an adverse inference continues to be warranted in selecting from among the facts otherwise available with respect to Chengdu Huifeng, in accordance with section 776(b) of the

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[47] *See OBA* and accompanying I&D Memo at Comment 2.
[48] *See* 19 CFR 351.302(c). *See also Hyosung Corp.*, slip op. 11-34, at 7 (Ct. Int'l Trade Mar. 31, 2011) ("It is correct that Commerce may, for good cause, extend the time limit established for submission of the requested information. *See* 19 C.F.R. § 351.302(b). However, in order for Commerce to grant an extension of time, the party requesting an extension must do so in writing before the applicable time limit expires, including reasons for its request. *See* 19 C.F.R. § 351.302(c). Hyosung failed to request an extension.").
[49] *See* 19 CFR 351.302(c)(2)(i) and (ii).
[50] *See Definition of Factual Information and Time Limits for Submission of Factual Information; Final Rule,* 78 FR 21246, 21247 (April 10, 2013).
[51] *Id.*
[52] *See OBA* and accompanying I&D Memo at Comment 2.
[53] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 11.
[54] *Id.* at 12-13.

Act and 19 CFR 351.308(a).[55]

Comment 2: Application of AFA to the Jiangsu Fengtai Single Entity

The Jiangsu Fengtai Single Entity argues that Commerce's application of AFA was not supported by substantial evidence and that the record confirms that the Jiangsu Single Entity was a fully cooperative respondent that submitted complete responses to Commerce's questionnaires. With respect to the legal standard governing the application of AFA, the Jiangsu Fengtai Single Entity raises the same arguments raised by Chengdu Huifeng.[56]

The Jiangsu Fengtai Single Entity argues that, given the sales and factors of production information that it provided to Commerce in this review, the agency's decision to apply AFA can only be construed as punitive, rather than remedial.[57] The Jiangsu Fengtai Single Entity contends that Commerce has an overriding obligation to calculate antidumping duty margins as accurately as possible.[58] The Jiangsu Fengtai Single Entity argues that, in this instance, Commerce had full and supported data to calculate a preliminary margin and should do so for the final results.

The Jiangsu Fengtai Single Entity argues that it has never demonstrated any lack of regard to its responsibilities, it has responded in a timely fashion to each and every questionnaire response, meeting all deadlines set by Commerce, and it never engaged in any "deliberate evasion" or sought to impede the Commerce's investigation.[59] To the contrary, the Jiangsu Fengtai Single Entity argues, it acted honestly and to the best of its ability, responding to each and every question posed by Commerce.

The Jiangsu Fengtai Single Entity argues that Commerce's decision to apply AFA to the Jiangsu Fengtai Single Entity is based on Commerce's ill-founded conclusion that the company failed to act to the best of its ability in responding to a supplemental question that solicited information from the periods of the last two completed reviews, *i.e.*, 2013-14 and 2014-15. The Jiangsu Fengtai Single Entity argues that Commerce's request would have required the company to provide documentation for three full years of a substantial number of sales (2013-2016). The Jiangsu Fengtai Single Entity argues that it did not ignore this request or seek to impede Commerce's progress in the review, but explained that it did not have the data to substantiate control numbers because previous Chinese counsel had prepared the company's data for the last two completed reviews and the new Chinese counsel could not re-create the methodology used by the previous Chinese counsel to develop the previous control numbers.

The Jiangsu Fengtai Single Entity argues that, although it was unable to provide a worksheet and a bill of materials to substantiate control numbers reported in the periods of the last two

[55] *Id. See also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).
[56] *See* Comment 1, at 4, *supra. See also* the Jiangsu Fengtai Single Entity's case brief at 2-4.
[57] *See* the Jiangsu Fengtai Single Entity's case brief at 2, citing *Nucor Corp. v. United States*, 414 F.3d 1331, 1336 (Fed. Cir. 2005) ("The purpose of antidumping and countervailing duty laws is remedial, not punitive or retaliatory").
[58] *Id.* at 3, citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).
[59] *Id.* at 3, where "deliberate evasion" implies the respondent's unwillingness to comply or reckless disregard of compliance standards, citing to *Nippon Steel Corp. v. United States,* 118 F. Supp. 2d 1366, 1378-79 (CIT 2000).

completed reviews, such information was not relevant to this proceeding and the Jiangsu Fengtai Single Entity submitted hundreds of pages of detailed company information for this administrative review, which would have permitted Commerce to calculate a margin for the company.

The Jiangsu Fengtai Single Entity argues that it is a long-established principle of antidumping law that "each administrative review is a separate segment of proceedings with its own unique facts,"[60] and a respondent is not permitted to refer to information on the record of a previous review even if such information remains unchanged in the current review, unless that respondent has resubmitted such data on the record of its current review. The Jiangsu Fengtai Single Entity argues that the results from the 2014-15 review, in which the Jiangsu Fengtai Single Entity was assigned AFA, should not be allowed to taint this review and all future reviews. The fact that the control numbers differ from those reported in a previous segment for which Commerce assigned the company AFA does not logically call into question the accuracy of the control numbers used in this review.

Therefore, the Jiangsu Fengtai Single Entity argues, Commerce's characterization that the Jiangsu Fengtai Single Entity "withheld requested information" is not supported by the administrative record. The Jiangsu Fengtai Single Entity claims that it did not "refuse" to provide the requested data, as it was not in possession of such data, but it accurately and fully responded by explaining that it could not re-create the data reported in prior reviews that had been developed by prior Chinese counsel.[61]

Finally, the Jiangsu Fengtai Single Entity argues that, while through no fault of the Jiangsu Fengtai Single Entity, Commerce cancelled the verification when the company expected to document the control numbers used in this review at the verification. The Jiangsu Single Entity expresses its commitment to cooperating in a full verification and argues that it should not be tainted with AFA because the verification was cancelled.

The petitioner argues that Commerce correctly applied AFA to the Jiangsu Fengtai Single Entity for failing to provide key information twice requested by Commerce that was in its possession and directly relevant to this review, even after receiving total AFA in the prior review for falsifying the same type of information.

The petitioner argues that the law is clear that Commerce shall use facts otherwise available in reaching a determination where an interested party: (1) withholds information requested by

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[60] *Id.* at 6, citing *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (2005); *Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519 (February 13, 2006) ("each administrative review of the order represents a separate administrative review proceeding and stands on its own."); and *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) ("what transpired in previous reviews is not binding precedent in later reviews").

[61] *Id.* at 7, citing *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565 (Fed. Cir. 1990) ("…a 'No' answer is not a refusal to provide data. If there is no data, 'No' is a complete answer." "The ITA may not properly conclude that resort to the best information rule is justified in circumstances where a questionnaire is sent and completely answered, just because the ITA concludes that the answers do not definitely resolve the overall issue presented.").

Commerce; (2) fails to provide information in a timely manner or in the form requested; or (3) significantly impedes a proceeding. Moreover, the petitioner argues, in selecting among facts otherwise available, the statute permits Commerce to use adverse inferences whenever an interested party fails to act to the best of its ability in responding to Commerce's requests for information.[62]

The petitioner argues that the "statutory mandate that a respondent act to 'the best of its ability' requires the respondent to do the maximum it is able to do" and that, in determining whether an interested party has met this standard, Commerce evaluates "whether {the} respondent has put forth its maximum effort to provide {it} with full and complete answers to all inquiries in an investigation."[63] The petitioner contends that, although "affirmative evidence of bad faith on the part of a respondent is not required before {Commerce} may make an adverse inference,"[64] the Jiangsu Fengtai Single Entity intentionally withheld key information in its possession that is directly relevant to this review.

The petitioner argues first that, even if the Jiangsu Fengtai Single Entity did not know how the control numbers submitted to Commerce were assigned in the previous two reviews, the Jiangsu Fengtai Single Entity had all the information Commerce was requesting, *i.e.*, all product-code customer combinations sold to the United States and their corresponding control numbers for this and the last two periods of reviews, as well as supporting documentation which would demonstrate that the changes to these products between the periods of reviews are accurately reflected in the control numbers. Therefore, the petitioner argues, the Jiangsu Fengtai Single Entity could have provided the requested list and worksheet. Moreover, the petitioner argues, the Jiangsu Fengtai Single Entity has the bills of materials for all the products it produces (and indeed, provided them in the last review when requested) and could have gone through its production records and determined when and if the products it sold changed for any reason, and identified which products changed and which products did not. Instead, the petitioner argues, the Jiangsu Fengtai Single Entity dismissed the whole question by stating that its Chinese counsel prepared the control numbers and it has "no idea why the control numbers reported in this review do not match the previously reported control numbers"[65] and failed to submit any documentation to demonstrate the product characteristics, even for products sold in the current review. Furthermore, according to the petitioner, when Commerce requested that the Jiangsu Fengtai Single Entity provide a worksheet with a comprehensive list of all control numbers and corresponding ERP codes for each control number reported in the last review, a comprehensive list of all control numbers and corresponding ERP and Quality codes for each control number reported in the current review, and, for each product with the ERP code in both reviews, the Quality Codes for the products reported in the last review and the bills of materials for the products in both periods, the Jiangsu Fengtai Single Entity provided none of the requested information but simply responded with the same response: we have no "idea {how} the control

[62] *See* the petitioner's rebuttal brief at 2, citing to section 776(b) of the Act.
[63] *See* the petitioner's rebuttal brief at 2-3, citing to *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).
[64] *Id.* at 3, citing to *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).
[65] *Id.* at 5, citing to the Jiangsu Fengtai Single Entity's first supplemental questionnaire response, "Re: Diamond Sawblades and Parts Thereof from China: 7th Administrative Review: Submission of First Supplemental Response," dated August 23, 2017 (Jiangsu Fengtai Single Entity 1SQR) at 19.

numbers in that review were created."[66]

The petitioner notes that Commerce did not apply AFA to the Jiangsu Fengtai Single Entity for its failure to provide information that it did not have or that was not relevant in this review, as the Jiangsu Fengtai Single Entity claims, but because the Jiangsu Fengtai Single Entity did not provide the bills of materials or ERP/Quality codes requested for control numbers in this review. Moreover, the petitioner argues, given that Commerce applied AFA on this issue in the prior review, it had a duty to thoroughly investigate and determine which product characteristics were correct. Clearly, the petitioner argues, the Jiangsu Fengtai Single Entity had the documents but did not want to openly admit that they were completely falsified.

Furthermore, the petitioner argues, the Jiangsu Fengtai Single Entity's attempt to frame this problem as some sort of disconnect between its documents and the control number (supposedly created by its Chinese counsel without its knowledge) is untruthful. When asked in this review about the misclassified control numbers in the prior review, the petitioner argues, the Jiangsu Fengtai Single Entity admitted its Chinese counsel "took overly aggressive measures in order to reduce the antidumping duty margins."[67] Yet, the petitioner notes, the Jiangsu Fengtai Single Entity claims that neither it nor its U.S. counsel were to blame, because it was its previous Chinese counsel "who provided U.S. counsel with the processed data for submission to Commerce."[68] However, the petitioner argues, the Jiangsu Fengtai Single Entity and its U.S. counsel – who certified that their submissions were accurate and complete to the best of their knowledge and are directly to blame for these numerous and admittedly false submissions made to Commerce – are ultimately responsible for preparing the submissions and ensuring their accuracy, and they should be held accountable.

Regardless, the petitioner argues, the grounds for AFA in the prior review only started with the misreporting of 49 of 67 control numbers, but the Jiangsu Fengtai Single Entity was given numerous opportunities to explain and correct the record.[69] Instead, according to the petitioner, it was the Jiangsu Fengtai Single Entity and its U.S. counsel that claimed that the change was the result of changes to the product specifications requested by the customer and, when asked to prove this claim, the Jiangsu Fengtai Single Entity submitted fake e-mails on which it falsified the date.[70] Now, the petitioner argues, without openly admitting it, the Jiangsu Fengtai Single Entity also submitted fake bills of materials.

The petitioner notes that the Jiangsu Fengtai Single Entity's Chinese counsel was hired to

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[66] *Id.* at 5, citing to the Jiangsu Fengtai Single Entity's second supplemental questionnaire response, "Re: Diamond Sawblades and Parts Thereof from China: 7th Administrative Review: Submission of Second Supplemental Response," dated November 3, 2017, at 3.
[67] *Id.* at 7, citing to Jiangsu Fengtai Single Entity 1SQR at 19.
[68] *Id.*
[69] *Id.* at 7, citing to Memorandum, "Re: Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China," dated June 6, 2017, at Comment 1, attached as Exhibit 11 to Letter to the Secretary of Commerce, "Re: Diamond Sawblades and Parts Thereof from the People's Republic of China: DSMC's Comments on Fengtai's Section C and D Questionnaire Responses," dated July 7, 2017.
[70] *Id.* at 3, citing to *Preliminary Results* and accompanying Preliminary Decision Memorandum at 12.

prepare its questionnaire responses, but it did not manage interactions with its U.S. customer, exercise control over its e-mail system, draw up its production records and bills of materials, or sign its attorney and company certifications. Consequently, the petitioner argues, even if the Jiangsu Fengtai Single Entity was unaware of changes made to its reported control numbers initially, when Commerce pointed out those changes, the Jiangsu Fengtai Single Entity deliberately defended those changes by creating the false claim that they were the result of customer requests, which the Jiangsu Fengtai Single Entity backed up with documentation in its two supplemental questionnaire responses submitted in the prior review.[71]

The petitioner contends that the Jiangsu Fengtai Single Entity is not innocent of misconduct that the company alleged to have been committed by its prior counsel. The petitioner maintains that Commerce can only conclude that the Jiangsu Fengtai Single Entity has continued to lie in this review when it continues to profess its innocence and argue that it "acted honestly and to the best of its ability, just like it did in the last review."[72] Moreover, the petitioner argues, the Jiangsu Fengtai Single Entity's refusal to submit those documents for control numbers sold in this review correctly led Commerce to "call{} into question the reliability of the Jiangsu Fengtai Single Entity's control-number reporting methodology in this review" and, consequently, Commerce is justified in applying total AFA to the Jiangsu Fengtai Single Entity.

Commerce's Position: We disagree with the Jiangsu Fengtai Single Entity that it cooperated to the best of its ability with our requests for information concerning its reported control numbers for this review and, therefore, we continue to find that the application of AFA to the Jiangsu Fengtai Single Entity is appropriate for purposes of the final results. The Jiangsu Fengtai Single Entity's arguments are predicated on an incorrect view that Commerce's determination to apply AFA in this administrative review is based, at least in part, on Commerce's determination in a prior administrative review that the control numbers reported in that review were unreliable. However, Commerce's prior determination was not the basis of Commerce's decision to apply AFA to the Jiangsu Fengtai Single Entity in this review. Rather, Commerce's decision in this review is based on the Jiangsu Fengtai Single Entity's failure to cooperate, as described in detail below and in the *Preliminary Results*, in this administrative review. Our prior decision concerning the unreliability of the control numbers reported by the Jiangsu Fengtai Single Entity serves as a backdrop to this administrative review and demonstrates why we needed to examine closely the control numbers reported in this review to evaluate whether they were reliable for purposes of calculating an antidumping duty rate. The accuracy of the control numbers affects our margin calculations, because our margin calculation is done, in large part, based on control numbers derived from product specifications. Based on the Jiangsu Fengtai Single Entity's

[71] *Id.* at 8, citing to Letter from the Jiangsu Fengtai Single Entity to the Secretary of Commerce, "Re: Diamond Sawblades and Parts Thereof from China, 6th Administrative Review: Section D Portion and Revised Sales and Cost Reconciliations of Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd's Supplemental Response," dated September 1, 2016; Letter from the Jiangsu Fengtai Single Entity to the Secretary of Commerce, "Re: Diamond Sawblades and Parts Thereof from China, 6th Administrative Review: Section D Portion of Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd's 2nd Supplemental Response," dated November 3, 2016, attached as Exhibits 5 and 6, respectively, to Letter from the petitioner to the Secretary of Commerce, "Re: Diamond Sawblades and Parts Thereof from the People's Republic of China: DSMC's Comments on Fengtai's Section C and D Questionnaire Responses," dated July 7, 2017.
[72] *Id.* at 8, citing to the Jiangsu Fengtai Single Entity's case brief at 4.

questionnaire responses in the last completed review that the petitioner placed on the record of this review,[73] Commerce determined in the last completed review that the control numbers reported in that review were unsubstantiated. The Jiangsu Fengtai Single Entity did not fully account for changes to control number between the last two completed reviews and led us to apply AFA to the Jiangsu Fengtai Single Entity in the last completed review.[74] In light of the issues surrounding the Jiangsu Fengtai Single Entity's control numbers reported in the last completed review,[75] and consistent with our practice in situations where we question part of or all of a reported control number,[76] we sought information to understand and support the reliability of the control numbers reported in this review, as the control numbers are critical to our analysis.

The Jiangsu Fengtai Single Entity explained that it did not have the data to substantiate control numbers because previous Chinese counsel had prepared the company data for the last two completed reviews and the new Chinese counsel could not re-create the methodology used by the previous Chinese counsel to develop the previous control numbers. However, this explanation confuses the matter at hand. As the petitioner correctly points out, we are not applying AFA to the Jiangsu Fengtai Single Entity for its failure to provide information that it did not have or that was not relevant in this review, as the Jiangsu Fengtai Single Entity claims, but because the Jiangsu Fengtai Single Entity did not provide the bills of materials or ERP/Quality codes requested to support control numbers in this review, despite being given multiple opportunities to do so. Indeed, the Jiangsu Fengtai Single Entity's failure to substantiate its reported control numbers in this administrative review did not hinge on whether it knew its previous Chinese counsel's methodology to develop the control numbers reported in a prior review, but rather on whether the Jiangsu Fengtai Single Entity provided the data in its possession used as a basis for creating and substantiating the control numbers reported in this review. Because the Jiangsu Fengtai Single Entity was unable to support the accuracy of the control numbers it reported in this administrative review, we are unable to rely on such control numbers in our margin calculation in this review.

As part of its analysis to understand, and evaluate the reliability of, the control numbers the Jiangsu Fengtai Single Entity reported in this administrative review, Commerce requested certain information to help it understand differences between control numbers reported in this and the prior administrative reviews. Specifically, as discussed in the Preliminary Decision Memorandum,[77] we asked the Jiangsu Fengtai Single Entity to provide a list and worksheet of all

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[73] *See* Letter to the Secretary of Commerce, "Re: Diamond Sawblades and Parts Thereof from the People's Republic of China: DSMC's Comments on Fengtai's Section C and D Questionnaire Responses," dated July 8, 2017 at Exhibits 1-11.

[74] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 89045 (December 9, 2016), and accompanying Preliminary Decision Memorandum at 12-14; unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26912 (June 12, 2017) (*6th Review Final*) and accompanying I&D Memo at Comment 1.

[75] *Id.*

[76] *See, e.g., Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-201*5, 82 FR 23190 (May 22, 2017), and accompanying I&D Memo at the "Application of Total AFA to Deacero" section and Comments 1 and 2.

[77] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 11-12.

product code-customer combinations sold to the United States and their corresponding control numbers for this and the last two periods of reviews and supporting documentation which demonstrates that the changes to these products between the periods of reviews are accurately reflected in the control numbers reported in this period of review. In response, the Jiangsu Fengtai Single Entity stated that it has no idea how its previous Chinese counsel created the control numbers reported in the prior review and failed to provide the requested product list and documentation.[78] In our second request for information, we asked the Jiangsu Fengtai Single Entity to provide a worksheet with a comprehensive list of all control numbers and corresponding "ERP Codes" and "Quality Codes" for the control numbers it reported in the prior review, and a list of all control numbers and corresponding "ERP Codes" and "Quality Codes" for each control number it reported in this review.[79] For each product with a similar internal product code in the prior review and this review, we asked that the Jiangsu Fengtai Single Entity also provide the bills of materials for the product reported in the last completed review and the product reported in this review. In response to our second request for information, the Jiangsu Fengtai Single Entity failed to provide the requested comprehensive list of all control numbers and corresponding "ERP Codes" and "Quality Codes" for the control numbers it reported in the last completed review and in this review. The Jiangsu Fengtai Single Entity failed to provide, for products with similar internal product codes reported in this review and the last completed review, supporting bills of materials for these products and prevented us from confirming the accuracy of the control numbers it reported in this review.[80] The Jiangsu Fengtai Single Entity also failed to explain why it was unable to provide the requested information, stating again that it has no idea how its previous Chinese counsel reported the control numbers reported in the last completed review.[81] Of particular note, the Jiangsu Fengtai Single Entity did not provide Commerce with the requested bill of materials for the products reported in this POR that would serve to support the control numbers as reported in this review. However, the Jiangsu Fengtai Single Entity's explanation that it did not understand the prior methodology used to report control numbers does not explain why the respondent was unable to provide the information underlying its reporting of control numbers in this administrative review.

The Jiangsu Fengtai Single Entity argues that it acted to the best of its ability in responding to our requests for information, that it submitted hundreds of pages of detailed company information for this review, which would have permitted us to calculate a margin for the company. However, it failed to provide the production documentation necessary for us to confirm the accuracy of control numbers reported in this review, documentation it should have in its possession simply as a producer of subject merchandise, regardless of how the company reported or used similar documentation for a prior review.

The Jiangsu Fengtai Single Entity argues it is a long-established principle of antidumping law that each administrative review is a separate segment of proceedings with its own unique facts.

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[78] *See* the Jiangsu Fengtai Single Entity's first supplemental response dated August 23, 2017, at 18-20.
[79] The Jiangsu Fengtai Single Entity stated that it created its internal product codes to identify unique products by combining for each product its "ERP Code," which identifies the appearance of a finished product, and its "Quality Code," which stipulates the production formula, and that the internal product codes serve as the basis to construct reported control numbers. *See* the Jiangsu Fengtai Single Entity's June 23, 2017, section C questionnaire response at C-5.
[80] *See* the Jiangsu Fengtai Single Entity's second supplemental response dated November 3, 2017, at 3.
[81] *Id.*

Commerce's decision in this review is based on the information on the record in this review. However, Jiangsu Fengtai Single Entity's responses from the last completed review, having been placed on the record of this review by the petitioner, demonstrate that we applied AFA to Jiangsu Fengtai Single Entity in the last completed review for very much the same reason that we applied AFA to the Jiangsu Fengtai Single Entity in this review: failure to substantiate its reported control numbers. The Jiangsu Fengtai Single Entity misunderstands the relevance of inquiring into its reporting of control numbers for the prior reviews. As discussed above, the issue is not the documentation for the control numbers from the prior reviews or the methodology employed in the Jiangsu Fengtai Single Entity's reporting in the prior administrative review. The issue is that Jiangsu Fengtai Single Entity did not provide the documentation that is necessary to substantiate the control numbers reported in this review (which coincide with many of the control numbers in the prior review).

The Jiangsu Fengtai Single Entity argues that the administrative record does not support our finding that it withheld or refused requested information because it was not in possession of such data and could not re-create the data reported in prior reviews that had been developed by prior counsel. However, as discussed above, the "data" it refers to and the documentation we sought are not the same thing. We did not request that the Jiangsu Fengtai Single Entity provide or re-create the methodology of its previous Chinese counsel to create the control numbers, but rather the production documentation used to create the control numbers that the Jiangsu Fengtai Single Entity should have as a producer of subject merchandise. In addition, the Jiangsu Fengtai Single Entity at one time possessed its production records used for its previous reviews, has not claimed its production records were destroyed or otherwise explained why it would no longer have them. Therefore, the Jiangsu Fengtai Single Entity has not established that it no longer has such records, and indeed the record suggests the Jiangsu Fengtai Single Entity still retains such production records and failed to provide them when requested.

To the extent the Jiangsu Fengtai Single Entity indicates it intended to provide at verification information to substantiate the control numbers that it reported in this review, such information was due in response to Commerce's first and second supplemental questionnaires, not for the first time at verification. Verification is not an opportunity to first provide information previously requested, but not provided.

Accordingly, we continue to find that the use of facts available is warranted, because necessary information is not available on the record, the Jiangsu Fengtai Single Entity withheld requested information, failed to provide information by the established deadlines, and significantly impeded this proceeding. We also continue to find that the Jiangsu Fengtai Single Entity failed to cooperate by not acting to the best of its ability to comply with our requests for information necessary to calculate a margin. The Jiangsu Fengtai Single Entity's failure to provide this information calls into question the reliability of Jiangsu Fengtai's control-number-reporting methodology in this review overall and, therefore, renders its databases unreliable for purposes of calculating an antidumping duty rate.

Comment 3: Selection of the AFA Rate

Chengdu Huifeng and the Jiangsu Fengtai Single Entity oppose Commerce's preliminary application of the China-wide rate of 82.05 percent as the total AFA rate to them. According to these two respondents, the CIT held in several cases that, even when the AFA is warranted for deficiencies in sales or factors of production data, if the company has otherwise established independence from government control, Commerce may not apply the China-wide rate as the total or partial AFA rate.[82] These two respondents claim that, because they are free from the Chinese government control and thus eligible for separate rates, the China-wide rate cannot be their AFA rate, even if Commerce continues to apply the AFA rate to them for the final results of this administrative review.

The petitioner supports Commerce's use of the China-wide rate as the AFA rate. The petitioner explains that Commerce's use of the China-wide rate in this administrative review is consistent with the current section 776 of the Act, which allows Commerce to use any dumping margin from any segment of the proceeding under the antidumping duty order on diamond sawblades from China based on Commerce's evaluation of the situation that resulted in Commerce's application of AFA in selecting among facts otherwise available. The petitioner argues that Commerce relied on a margin used in a prior administrative review based on its determination that the margin was sufficiently adverse to prevent an uncooperative respondent from obtaining a more favorable result with non-cooperation than with full cooperation.

According to the petitioner, the cases cited by the two individually examined respondents do not support their arguments. The petitioner contends that *Shenzhen Xinboda* and *Shandong Huarong* are different because, in both cases, the CIT held that Commerce improperly determined, based on AFA, that the respondents at issue failed to rebut the presumption of the government control and, thus, were part of the China-wide entity, which is not the case for the two individually examined respondents in this administrative review. Moreover, the petitioner explains, in *Shandong Huarong*, after multiple remands, Commerce ultimately applied to respondents an AFA rate that was the same as the China-wide rate, and the CIT sustained this final remand redetermination.

The petitioner claims that the current section 776 of the Act no longer provides the statutory framework for *Qingdao Taifa* and *Gerber Food*, in which the CIT explained that an AFA rate must bear some relationship to a respondent's actual dumping margin and held that Commerce, however, established no connection between the China-wide rate and an estimate of the respondent's actual rate. The petitioner argues that the current section 776(d)(3)(B) of the Act does not require Commerce to demonstrate that the AFA rate reflects an alleged commercial reality of an interested party.

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[82] *See* Chengdu Huifeng's case brief at 14-17 and the Jiangsu Fengtai Single Entity's case brief at 8-11, citing *Shenzhen Xinboda Indus. Co. v. United States*, 180 F. Supp. 3d 1305, 1315-16 (CIT 2016) (*Shenzhen Xinboda*), and quoting *Qingdao Taifa Group Co. v. United States*, 637 F. Supp. 2d 1231, 1241 (CIT 2009) (*Qingdao Taifa*), *Gerber Food (Yunnan) Co. v. United States*, 491 F. Supp. 2d 1326, 1350 (CIT 2007), *Gerber Food (Yunnan) Co. v. United States*, 387 F. Supp. 2d 1270, 1287 (CIT 2005) (*Gerber Food*), and *Shandong Huarong Gen. Group Corp. v. United States*, 27 CIT 1568, 1594-95 (2003) (*Shandong Huarong*).

Commerce's Position: For the final results of this administrative review, we continue to apply 82.05 percent as the AFA rate to the two individually examined respondents. As we explained in the *Preliminary Results*, in applying an adverse inference, we may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[83] In selecting an AFA rate, we select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[84] Under the Trade Preferences Extension Act of 2015, which was enacted after *Qingdao Taifa* and *Gerber Food* and which applies to this administrative review, we may use any rate from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins.[85] The AFA rate we used is a rate from a prior segment of this proceeding.[86] Accordingly, we continue to determine that the AFA rate is 82.05 percent for the final results of this review.

This case is distinguishable from *Shenzhen Xinboda* and *Shandong Huarong*, cited by respondents, in which the CIT ruled against Commerce's denial of separate rate eligibility based on deficiencies in the sales data[87] or separate rates information that the Court found Commerce decided not to be dispositive with respect to the separate rate eligibility.[88] Commerce has not denied these two individually examined respondents a separate rate in this segment of the proceeding. Rather, we have assigned them a separate rate, which is a separate rate based on AFA. However, if we face similar circumstances in a future segment of this proceeding, we intend to reconsider whether it is appropriate to find a company eligible for a separate rate.

Comment 4: Selection of the Separate Rate for Non-Selected Respondents

Fourteen non-selected separate rate respondents[89] oppose the application of the AFA rate of 82.05 percent to them as the separate rate and request the application of 6.19 percent, which was the final rate for non-selected separate rate respondents in the last completed administrative review, as the separate rate to them for the final results of this administrative review. These respondents argue that they are fully cooperating respondents eligible for a separate rate and

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[83] *See* section 776(b) of the Act.
[84] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (SAA) at 870.
[85] *See* section 776(d)(1)-(2) of the Act; Trade Preferences Extension Act of 2015, section 502(3).
[86] *See 6th Review Final*, 82 FR at 26913.
[87] *See Shenzhen Xinboda*, 180 F. Supp. 3d at 1315-17.
[88] *See Shandong Huarong*, 27 CIT at 1594-95 ("Furthermore, the record also shows that Commerce seemingly determined that the lack of such documentation was not dispositive with respect to the separate rates determination. Thus, because the Companies did provide evidence of their independence from government control and Commerce: (1) verified such information; (2) did not request the Companies to remedy any deficiencies in their separate rates information; and (3) did not find the lack of such information dispositive with respect to the separate rates determination, the court cannot sustain Commerce's determination that the Companies should be assigned the {China}-wide antidumping duty margin based on facts available." (internal citations omitted)).
[89] These fourteen respondents are Bosun, Danyang Huachang, Danyang NYCL Tools Manufacturing Co., Ltd., Danyang Weiwang Tools Manufacturing Co., Ltd., Guilin Tebon Superhard Material Co., Ltd., Hangzhou Deer King Industrial and Trading Co., Ltd., Huzhou Gu's Import & Export Co., Ltd., Jiangsu Youhe Tool Manufacturer Co., Ltd., Quanzhou Zhongzhi Diamond Tool Co., Ltd., Rizhao Hein Saw Co., Ltd., Saint-Gobain, Shanghai Jingquan Industrial Trade Co., Ltd., Shanghai Starcraft Tools Company Limited, and Zhejiang Wanli Tools Group Co., Ltd.

Commerce's decision to apply an AFA rate to them is inaccurate, unreasonable, unsubstantiated with evidence, and contrary to section 776(a) of the Act and case precedents such as *Gerber Food* and *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221 (CIT 1998).

These respondents explain that the statute does not allow Commerce an unbound discretion in selecting a reasonable method to establish the separate rate. These respondents claim that the statute limit Commerce's discretion in this regard to ensure that the established rates are as accurate as possible and supported by substantial evidence. Citing, *e.g.*, SAA at 4201, these respondents state that, if averaging the calculated margins for individually examined respondents would not be feasible or would result in margins that would not be reasonably reflective of potential dumping margins for non-selected separate rate respondents, Commerce may use other reasonable methods. These respondents argue that Commerce must articulate a rational connection between the record evidence and the rate assigned to non-selected separate rate respondents. These respondents contend that, however, Commerce did not determine a separate rate that bears some relationship to non-selected separate rate respondents' actual dumping margins and their economic reality.

These respondents distinguish this administrative review from *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle Corp.*), which overturned Commerce's decision to assign a rate above *de minimis* from a previous review to non-selected separate rate respondents in the underlying review, instead of assigning an average of the *de minimis* rates for individually examined respondents in the underlying review. According to these respondents, *Albemarle Corp.* criticized Commerce for not adhering to the legislative intent to use the expected method (averaging the *de minimis* margins assigned to the individually examined respondents) when no information on the record suggested that the *de minimis* margins would be unreasonable as potential dumping margins. These respondents contend that, unlike *Albemarle Corp.*, this administrative review involves the application of the AFA rate to the two individually examined respondents and to the non-selected separate rate respondents. These respondents claim that Commerce's preliminary reliance on *Albemarle Corp.* to assign an AFA rate to fully cooperative non-selected separate rate respondents is erroneous.

These respondents explain that case precedents allow Commerce to assign to non-selected separate rate respondents a separate rate from a prior administrative review in administrative reviews where a calculate rate above *de minimis* is unavailable for various reasons, *e.g.*, the individually examined respondents are assigned a total AFA rate and assignment of such an AFA rate to non-selected separate rate respondents would be unreasonable[90] or the two individually examined respondents are ineligible for a separate rate and treated as part of the non-market economy entity.[91] These respondents argue that, because Commerce applied a total AFA rate to

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[90] *See* Bosun's case brief at 7-8, and Danyang Huachang, et al.'s case brief at 9, citing *Shenzhen Xinboda Indus. Co. v. United States*, 180 F. Supp. 3d 1305, 1321 (CIT 2016). *See also* Bosun's case brief at 8, citing *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 82 FR 57951 (December 8, 2017).

[91] *See* Bosun's case brief at 5-8, citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Rescission of New Shipper Review; 2015-2016*, 83 FR 1238 (January 10, 2018), and *Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 658 (January 5, 2018).

the two individually examined respondents without calculating margins, the final rate for non-selected separate rate respondents in the last completed administrative review, *i.e.*, 6.19 percent, is a reasonable alternative rate for non-selected separate rate respondents in this administrative review. These respondents state that assigning to them 6.19 percent is consistent with Commerce's current practice and most reflective of non-selected separate rate respondents' estimated dumping margins.

Bosun argues that *Albemarle Corp.* specifically contemplated two circumstances in which the use of data from prior periods would be reasonable as an alternative to averaging the two individually calculated *de minimis* margins: (1) when there is evidence that the overall market and the dumping margins have not changed from one period to another period and (2) when applying an AFA rate based on data from a previous administrative review. Bosun contends that, however, a non-contemporaneous AFA rate used to deter non-cooperation of individually examined respondents is not reasonably reflective of the contemporaneous dumping margin of cooperating non-selected separate rate respondents and, therefore, not reasonably applicable to cooperating non-selected separate rate respondents, especially when the AFA rate of 82.05 dates back to the 2010-11 administrative review and predates 6.19 percent, which is the final rate from the last completed administrative review.

Saint-Gobain states that non-selected separate rate respondents in most of the last six completed administrative reviews received dumping margins in single digits. Bosun explains that its calculated margins have been low in prior reviews and the AFA rate of 82.05 percent is not based on Bosun, another cooperating respondent, or any contemporaneous pricing data. Bosun claims that its highest historical margin, 29.76 percent in the 2013-14 administrative review, is nowhere near 82.05 percent assigned to it in the *Preliminary Results*.

The petitioner supports Commerce's preliminary use of the AFA rate as the rate assigned to non-selected separate rate respondents. The petitioner asserts that statute, legislative history, and case precedents support Commerce's use of an AFA rate applied to individually examined respondents as the rate for fully cooperative, non-selected respondents eligible for a separate rate. The petitioner explains that section 735 of the Act states that, in a situation in which all dumping margins for individually examined respondents are either calculated *de minimis* and/or based on AFA, Commerce may use any reasonable method, including averaging the estimated weighted-average dumping margins determined for individually examined respondents, to calculate the margin for non-selected respondents. The petitioner explains further that the expected calculation method specified in the SAA for such cases will be to weight-average the zero and *de minimis* margins and margins based on facts available.

According to the petitioner, *Albemarle* allows Commerce to deviate from the expected calculation method and use other reasonable methods only if Commerce reasonably concludes that the expected calculation method is not feasible or would not be reasonably reflective of potential dumping margins. The petitioner argues that, in the absence of Commerce's specific finding that it would result in a non-representative margin for the non-selected separate rate respondents, Commerce should average the estimated weighted-average dumping margin determined for individually examined respondents. The petitioner contends that, for purposes of assigning a rate to non-selected respondents, neither the statute, the legislative history, nor

Albemarle distinguish between individually examined respondents receiving calculated *de minimis* margins and individually examined respondents receiving an AFA rate. The petitioner contends further that the statute and the SAA envision the use of an AFA rate in determining a rate for non-selected respondents in certain circumstances. The petitioner asserts that Commerce's burden of demonstrating a reasonable basis to deviate from the expected calculation methodology does not extend to explaining why it is appropriate to follow the preferred methodology.

The petitioner contends that the rate of 82.05 percent for non-selected separate rate respondents is reasonable in light of a calculated margin of 61.48 percent in the 2013-14 administrative review. The petitioner claims that 82.05 percent is not even the highest margin from the petition and is based in part on the calculated margin from a cooperative respondent. The petitioner states that 6.19 percent from the last completed review is currently subject to litigation at the CIT.

According to the petitioner, there were no *de minimis* or AFA rates in *Drawn Stainless Steel Sinks* and *Tapered Roller Bearings* because the individually examined respondents were part of the China-wide entity. The petitioner also explains that Commerce specifically found in *Fresh Garlic* that the expected calculation methodology should not be used. The petitioner asserts that these cases do not justify the application of 6.19 percent to non-selected separate rate respondents. The petitioner claims that the preliminary use of the AFA rate to non-selected separate rate respondents is consistent with Commerce's recent decisions.[92]

<u>Commerce's Position</u>: The statute and Commerce's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Our practice in administrative reviews involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to seek guidance from section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation.[93]

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[92] *See* the petitioner's case brief at 21, citing, *e.g.*, *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Determination of No Shipments, and Partial Rescission of the Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42785 (September 12, 2017), *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42289 (September 7, 2017), and *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015-2016*, 82 FR 26666 (June 8, 2017).

[93] *See Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 49460 (August 13, 2010) (*Warmwater Shrimp*) ("the statute and {Commerce's} regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where {Commerce} limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. (Citation omitted.) We further explained that {Commerce's} practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies excluding zero and *de minimis* rates and rates based entirely on facts available. (Citation omitted.) However, due to changes in certain surrogate values for Hilltop and Regal from the Preliminary Results, {Commerce} has, for the final results,

Specifically, section 735(c)(5)(A) of the Act states that:

> the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 {(facts available)}.

Section 735(c)(5)(B) of the Act also provides that:

> If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or are determined entirely under section 776, the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.

The SAA includes the following:

> Section 219(b) of the bill adds new section 735(c)(5)(B) which provides an exception to the general rule if the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis*. In such situations, Commerce may use any reasonable method to calculate the all others rate. The expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available. However, if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.[94]

Echoing the above provisions, the CIT held that:

> … both "{Section} 1673d(c)(5)(B) and the SAA explicitly allow Commerce to factor both *de minimis* and AFA rates {of individually investigated exporters and producers} into the calculation methodology." Accordingly, as a method "derived from the relevant statutory language," it is not per se unreasonable for

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calculated all zero or *de minimis* dumping margins for the mandatory respondents. Because the Act does not address the rate to be applied to companies not selected for individual examination, we have looked to section 735(c)(5) of the Act for guidance.").

[94] *See* SAA at 4163. *See also Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 1/2 Inches) from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 45124 (July 12, 2016) and accompanying Preliminary Decision Memorandum at 7-8, unchanged in *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 41/2 Inches) from Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 81 FR 80640 (November 16, 2016).

> Commerce to use a simple average of *de minimis* and AFA rates to calculate the separate rate antidumping duty margin.[95]

In the administrative review underlying *Albemarle*, Commerce assigned *de minimis* antidumping duty margins to the two individually examined exporters.[96] Commerce then assigned margins to the non-examined separate rate respondents that were "pulled forward" from a prior segment of the proceeding instead of averaging the two *de minimis* margins to calculate a separate rate.[97]

The United States argued at the CAFC that Commerce's approach was a permissible interpretation of section 735(c)(5) of the Act. This statutory provision, quoted above, states that Commerce must calculate separate rates by averaging of the margins for the individually investigated exporters and producers. This provision, however, also provides exceptions to this rule allowing Commerce to use "any reasonable method" to establish separate rates in certain circumstances, including when all the individually investigated exporters received *de minimis* margins. The United States argued that Commerce was permitted to resort to "any reasonable method" to calculate the separate rates because both individually examined exporters had received *de minimis* margins.[98]

The CAFC in *Albemarle* rejected these arguments. The court cited to the SAA which states that the statute "assumes that...reviewing only a limited number of exporters will enable Commerce to reasonably approximate the margins of all known exporters."[99] Based on this provision of the SAA, the Court determined that averaging the rates of individually examined exporters and producers is the "expected methodology" for calculating separate rates.[100] The CAFC furthermore placed the burden on Commerce when deviating from the expected methodology to establish based on "substantial evidence" that "there is a reasonable basis for concluding that the separate respondent's dumping is different" from the dumping of the individually examined exporters and producers.[101]

The CAFC determined that the statute would not permit Commerce to pull forward rates from a prior segment of the proceeding under the circumstances before it – finding that "{t}here is no basis to simply assume that the underlying facts or calculated dumping margins remain the same from period to period."[102] The CAFC found that there are two limited circumstances where data from a prior period may otherwise be permissible: (1) "where there is evidence that the overall market and the dumping margins have not changed from period to period," and (2) when Commerce is selecting an AFA margin for a non-cooperating individually examined exporter.[103]

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[95] *See Baroque Timber Indus. (Zhongshan) Co. v. United States*, 971 F. Supp. 2d 1333, 1341 (CIT 2014) (internal citations omitted).
[96] *Albemarle*, 821 F.3d at 1349-50.
[97] *Id.* at 1349.
[98] *Id.* at 1353.
[99] *Id.*
[100] *Id.* at 1349.
[101] *Id.* at 1353.
[102] *Id.* at 1356.
[103] *Id.* at 1357-58.

Furthermore, the CAFC expressed the following:

> The SAA thus makes clear that under the statute, when all individually examined respondents are assigned *de minimis* margins, Commerce is expected to calculate the separate rate by taking the average of those margins. Commerce may use "other reasonable methods," but only if Commerce reasonably concludes that the expected method is "not feasible" or "would not be reasonably reflective of potential dumping margins."[104]

Although the fact pattern in *Albemarle* did not involve the application of adverse inferences, as does the instant administrative review, we find the CAFC's reasoning in *Albemarle* to be applicable to the respondents in this proceeding. This reasoning applies equally where all dumping margins for the individually examined respondents are either zero, *de minimis*, or based entirely on AFA when there is no evidence to reasonably conclude that the expected method is "not feasible" or "would not be reasonably reflective of potential dumping margins."[105]

In this review, we individually examined Chengdu Huifeng and the Jiangsu Fengtai Single Entity and continued to find them eligible for a separate rate but assigned the AFA rate to them due to their failure to cooperate to the best of their ability with our requests for information. For the final results of review, we have calculated the dumping margin assigned to the non-individually examined separate rate respondents by computing a simple average of the rates assigned to Chengdu Huifeng and the Jiangsu Fengtai Single Entity, which were assigned based on AFA. This is in harmony with the statute, which provides for basing the all-others rate on an average of the estimated weighted-average dumping margins determined for the exporters and producers individually investigated, including dumping margins based entirely on fact available, if all of those dumping margins are zero, *de minimis*, or entirely based on facts available, as is the case here, as well as the SAA and the CAFC, which have confirmed that this approach is the "expected method" for determining the all-others rate.

Moreover, contrary to the non-selected separate rate respondents' position, *Tapered Roller Bearings* is not a case where we decided to exclude from our calculation of separate rates an AFA rate assigned to an individually examined respondent, in favor of basing the separate rate solely on one individually examined respondent's zero percent margin. Rather, in *Tapered Roller Bearings*, Commerce based the separate rate on the zero percent margin calculated for one of the two respondents because this approach followed the "expected method" and there were no other dumping margins to average, given that the other respondent failed to rebut the presumption of the government control and qualify for a separate rate (the China-wide entity was not under review).[106] In that case, Commerce followed the "expected method" by applying to

[104] *Id.* at 1352.
[105] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum Final Determination*), and accompanying I&D Memo at 4.
[106] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review, and Preliminary Rescission of New Shipper Review; 2014-2015*, 81 FR 45455 (July 14, 2016), and accompanying Preliminary Decision Memorandum at 9, unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Rescission of New Shipper Review; 2014-2015*, 82 FR 4844 (January 17, 2017).

non-selected separate rate respondents the *de minimis* rate calculated for the mandatory respondent. Similarly, in this administrative review, we are following the expected method by averaging the dumping margins for the individually examined respondents, which are eligible for a separate rate.

To be consistent with *Albemarle Corp.*, we did not assign to non-selected separate rate respondents the separate rate from the last completed administrative review, *i.e.*, 6.19 percent. Instead, we calculated this dumping margin with guidance from the statute which in general allows the all-others rate to be calculated using AFA rates when all rates determined for individually-examined respondents are zero, *de minimis* or based entirely on AFA, which is the case here.[107] Because the non-selected separate rate respondents were not selected for individual examination, there are no dumping margins specifically calculated for these non-selected respondent on the record of this administrative review. In other words, we have no alternative margin on the record of this administrative review to assign to the non-selected separate rate respondents.

The record does not support parties' claims that we did not calculate a reasonable rate for the non-selected separate rate respondents. In *Albemarle Corp.*, the CAFC determined that Commerce provided insufficient evidence for assigning dumping margins from prior segments of the proceeding to the separate rate respondents. Specifically, the Court considered that these past margins did not establish the separate rate dumping margins as accurately as possible when Commerce could apply the expected method with the calculated *de minimis* rates of individually examined respondents in the current period of the underlying administrative review.[108] Here, however, we are not pulling forward a rate from a previous administrative review for the non-selected separate rate respondents or averaging rates not assigned to an individually examined respondent in this administrative review. We are averaging only the dumping margins of the individually examined respondents, consistent with the analysis in *Albemarle Corp*.

Thus, we have no basis to ignore the AFA rate in our calculation of the rate for non-selected separate rate respondents in favor of basing the separate rate in the last completed administrative review. Section 735(c)(5)(B) of the Act and the expected method described in the SAA explicitly contemplate the possibility of basing the separate rate on the experience of all of the fully-investigated individually examined respondents, including those assigned an AFA rate,

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[107] *See Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378 (CIT 2013) ("However, {section 735(c)(5)(B) of the Act} and the SAA explicitly allow Commerce to factor both *de minimis* and AFA rates into the calculation methodology.").

[108] *Id*. at 1351-59, finding no evidence to support Commerce's determination that an average of the individually examined respondents' dumping margins would not reflect the actual dumping margins of two of the separate rate respondents which would instead require it to pull forward a rate, and finding further that Commerce was required to follow the expected method to determine the separate rate for non-selected respondents using the dumping margins "of the individually examined respondents from the contemporaneous period." *See also Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1379-83, (CIT 2009), finding that Commerce did not provide provided sufficient evidence to support that abandoning the expected method of weight averaging the *de minimis* margins of the individually examined respondents and pulling forward the investigation rate established the relevant antidumping dumping margins as accurately as possible.

where all of the dumping margins calculated for the individually examined respondents are zero, *de minimis*, or based entirely on facts available.

The expected method is feasible and *Albemarle Corp.* directs us to average the rates assigned to the individually examined respondents in an administrative review.[109] Applying the method set forth in section 735(c)(5)(B) of the Act and described as the "expected method" in the SAA, we have applied to non-selected separate rate respondents a rate equal to the simple average of the rates we assigned to the individually-examined respondents. Accordingly, for these final results, we will assign a dumping margin of 82.05 percent to the non-selected separate rate respondents.

V. Recommendation

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

☒ Agree ________ ☐ Disagree ________

4/16/2018

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

[109] *See Albemarle Corp.*, 821 F.3d at 1355.