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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review on Narrow Woven Ribbons with Woven Selvedge from Taiwan

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SUMMARY

We analyzed the case and rebuttal briefs of interested parties in the 2013-2014 administrative review of the antidumping duty (AD) order on narrow woven ribbons with woven selvedge (NWR) from Taiwan. The review covers two producers/exporters of the subject merchandise (i.e., one mandatory respondent, Roung Shu Industry Corporation (Roung Shu), and one non-selected company, A-Madeus Textile Ltd. (A-Madeus)). As a result of our analysis, we made no changes to the margin assigned to either respondent in these final results. We recommend that you approve the positions described 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:

1. Assigned Rate to A-Madeus

BACKGROUND

On October 7, 2015, the Department published in the Federal Register the preliminary results of the 2013-2014 administrative review of the antidumping duty order on NWR from Taiwan.[1] The period of the review (POR) is September 1, 2013, through August 31, 2014.

[1] See Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 60627 (October 7, 2015) (Preliminary Results).

We invited parties to comment on the Preliminary Results. In November 2015, we received a case brief from A-Madeus and a rebuttal brief Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc. (the petitioner). Based on our analysis of the comments received, we have continued to base the final dumping margin for A-Madeus on the most recent margin calculated for an individually-examined respondent, specifically the margin calculated for the sole participating respondent in the most recent AD administrative review on NWR.[2]

Because we received no comments related to Roung Shu, we made no changes to the margin calculated for this company in these final results.

MARGIN CALCULATIONS

We calculated export price and normal value using the same methodology stated in the Preliminary Results.

SCOPE OF THE ORDER

The scope of the order covers narrow woven ribbons with woven selvedge, in any length, but with a width (measured at the narrowest span of the ribbon) less than or equal to 12 centimeters, composed of, in whole or in part, man-made fibers (whether artificial or synthetic, including but not limited to nylon, polyester, rayon, polypropylene, and polyethylene teraphthalate), metal threads and/or metalized yarns, or any combination thereof. Narrow woven ribbons subject to the order may:

- also include natural or other non-man-made fibers;
- be of any color, style, pattern, or weave construction, including but not limited to single faced satin, double-faced satin, grosgrain, sheer, taffeta, twill, jacquard, or a combination of two or more colors, styles, patterns, and/or weave constructions;
- have been subjected to, or composed of materials that have been subjected to, various treatments, including but not limited to dyeing, printing, foil stamping, embossing, flocking, coating, and/or sizing;
- have embellishments, including but not limited to appliqué, fringes, embroidery, buttons, glitter, sequins, laminates, and/or adhesive backing;
- have wire and/or monofilament in, on, or along the longitudinal edges of the ribbon;
- have ends of any shape or dimension, including but not limited to straight ends that are perpendicular to the longitudinal edges of the ribbon, tapered ends, flared ends or shaped ends, and the ends of such woven ribbons may or may not be hemmed;

[2] This margin is from the 2012-2013 administrative review. See Narrow Woven Ribbons With Woven Selvedge From Taiwan; Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 19635, 19636 (April 13, 2015) (Ribbons from Taiwan 2012-2013 Final Results).

- have longitudinal edges that are straight or of any shape, and the longitudinal edges of such woven ribbon may or may not be parallel to each other;

- consist of such ribbons affixed to like ribbon and/or cut-edge woven ribbon, a configuration also known as an "ornamental trimming;"

- be wound on spools; attached to a card; hanked (i.e., coiled or bundled); packaged in boxes, trays or bags; or configured as skeins, balls, bateaus or folds; and/or

- be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.

Narrow woven ribbons subject to the order include all narrow woven fabrics, tapes, and labels that fall within this written description of the scope of this antidumping duty order.

Excluded from the scope of the order are the following:

(1) formed bows composed of narrow woven ribbons with woven selvedge;

(2) "pull-bows" (i.e., an assemblage of ribbons connected to one another, folded flat and equipped with a means to form such ribbons into the shape of a bow by pulling on a length of material affixed to such assemblage) composed of narrow woven ribbons;

(3) narrow woven ribbons comprised at least 20 percent by weight of elastomeric yarn (i.e., filament yarn, including monofilament, of synthetic textile material, other than textured yarn, which does not break on being extended to three times its original length and which returns, after being extended to twice its original length, within a period of five minutes, to a length not greater than one and a half times its original length as defined in the Harmonized Tariff Schedule of the United States (HTSUS), Section XI, Note 13) or rubber thread;

(4) narrow woven ribbons of a kind used for the manufacture of typewriter or printer ribbons;

(5) narrow woven labels and apparel tapes, cut-to-length or cut-to-shape, having a length (when measured across the longest edge-to-edge span) not exceeding eight centimeters;

(6) narrow woven ribbons with woven selvedge attached to and forming the handle of a gift bag;

(7) cut-edge narrow woven ribbons formed by cutting broad woven fabric into strips of ribbon, with or without treatments to prevent the longitudinal edges of the ribbon from fraying (such as by merrowing, lamination, sono-bonding, fusing, gumming or waxing), and with or without wire running lengthwise along the longitudinal edges of the ribbon;

(8) narrow woven ribbons comprised at least 85 percent by weight of threads having a denier of 225 or higher;

(9) narrow woven ribbons constructed from pile fabrics (i.e., fabrics with a surface effect formed by tufts or loops of yarn that stand up from the body of the fabric);

(10) narrow woven ribbon affixed (including by tying) as a decorative detail to non-subject merchandise, such as a gift bag, gift box, gift tin, greeting card or plush toy, or affixed (including by tying) as a decorative detail to packaging containing non-subject merchandise;

(11) narrow woven ribbon that is (a) affixed to non-subject merchandise as a working component of such non-subject merchandise, such as where narrow woven ribbon comprises an apparel trimming, book marker, bag cinch, or part of an identity card holder, or (b) affixed (including by tying) to non-subject merchandise as a working component that holds or packages such non-subject merchandise or attaches packaging or labeling to such non-subject merchandise, such as a "belly band" around a pair of pajamas, a pair of socks or a blanket;

(12) narrow woven ribbon(s) comprising a belt attached to and imported with an item of wearing apparel, whether or not such belt is removable from such item of wearing apparel; and

(13) narrow woven ribbon(s) included with non-subject merchandise in kits, such as a holiday ornament craft kit or a scrapbook kit, in which the individual lengths of narrow woven ribbon(s) included in the kit are each no greater than eight inches, the aggregate amount of narrow woven ribbon(s) included in the kit does not exceed 48 linear inches, none of the narrow woven ribbon(s) included in the kit is on a spool, and the narrow woven ribbon(s) is only one of multiple items included in the kit.

The merchandise subject to the order is classifiable under the HTSUS statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by the order is dispositive.

DISCUSSION OF THE ISSUES

Comment 1: *The Assigned Rate to A-Madeus*

There are two respondents in this administrative review: Roung Shu (a mandatory respondent) and A-Madeus (a producer/exporter of NWR not selected for individual review). In the preliminary results, we calculated a zero margin for Roung Shu, and we assigned a rate of 30.64

percent to A-Madeus. The rate assigned to A-Madeus is the most recent margin calculated for an individually-examined respondent, specifically the sole dumping margin calculated in the 2012-2013 administrative review of this AD order.

A-Madeus claims that the Department's determination to assign it a rate of 30.64 is not supported by record evidence and not in accordance with law. Therefore, A-Madeus argues that the Department should assign it the same rate calculated for Roung Shu in this review (i.e., 0.00 percent), or, failing that, the rate at which A-Madeus posted cash deposits on entries of subject merchandise during the POR (i.e., the all-others rate of 4.37 percent).

A-Madeus acknowledges that the Tariff Act of 1930, as amended (the Act) directs the Department to use "any reasonable method" to determine rates for cooperative non-selected respondents, when the calculated rates of the individually-examined respondents are zero, de minimis, or based entirely upon facts available. However, A-Madeus contends that the Department's discretion in determining such rates is not unbounded, given that the courts have required the Department to explain why the assigned rate is "based on the best available information and establishes antidumping margins as accurately as possible."[3] Moreover, A-Madeus notes that the CIT has held that there must be record evidence to justify not applying calculated rates to non-selected respondents.[4] Consequently, A-Madeus maintains that the Department may not refuse to assign a zero rate to a non-selected company without explaining why assigning that rate would be unreasonable.

A-Madeus disagrees that the Department may presume, as it did in the Preliminary Results, that using a calculated rate from a prior segment better reflects potential dumping margins than would a zero rate. A-Madeus maintains that such a presumption is not record evidence.[5] Further, A-Madeus contends the fact that other companies may have dumped in prior segments has no bearing on whether A-Madeus was dumping during this POR because there is nothing to connect the behavior of those companies to A-Madeus' own behavior.[6] According to A-Madeus, without that link, the Department's use of prior rates is not reasonable.

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[3] See Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368, 1379 (CIT 2009) (Amanda I) (quoting Shakeproof Assembly Components Div. of Ill. Tool Workers Inc. v. United States, 268 F. 3d 1376, 1382 (Fed. Cir. 2001)). See also Navneet Publ'ns (India) Ltd. v. United States, 99 F. Supp. 1354 (CIT 2014) (Navneet).

[4] See Amanda Foods (Vietnam) Ltd. v. United States, 714 F. Supp. 2d 1283, 1292 (CIT 2010) (Amanda II); see also, Albemarle Corp. et al. v. United States, 931 F. Supp. 2d 1280 (CIT 2013) (Albemarle) at 19 (where the Court questioned the exclusion of the de minimis rates of the two mandatory respondents from the calculation of the separate rate and found that the mandatory respondents' rates were representative of the whole industry for the period under review); Albemarle Corp. et al. v. United States, 27 F. Supp. 3d 1336 (CIT 2014) (affirming the Department's assignment of de minimis margins to several separate rate respondents); and Yantai Oriental Juice Co. v. United States, 27 Ct. Int'l Trade 477, 487 (2003) (finding that it was improper for the Department to have raised the non-selected respondents' antidumping duty margin as a result of the mandatory respondents' margins going to zero).

[5] See Qingdao Taifa Grp. Co. v. United States, 760 F. Supp. 2d 1379, 1386 (CIT 2010) ("A presumption based on nothing is not evidence; thin air is not evidence supporting a dumping margin…").

[6] See Amanda II at 1291 n.13 ("the availability of rates from prior segments does not in itself suffice to support the reasonableness of applying such rates to pricing behavior in a subsequent period of review, and therefore does not necessarily bear on the reasonableness of using section (B)'s expected method in a particular segment"). See also Navneet at 1364-65 (rejecting a rate from a previous segment because it "appears untethered to respondents' pricing

A-Madeus also disagrees with the Department's finding that a consistent history of dumping in this proceeding exists. A-Madeus points out that the Department has calculated only two prior margins above zero or de minimis (i.e., the 4.37 percent rate computed during the less-than-fair value (LTFV) investigation[7] and the 30.64 percent rate from the 2012-2013 administrative review), and all of the remaining calculated margins have been either zero or de-minimis. Although A-Madeus notes that the Department has assigned other affirmative rates, it points out that these rates have been based upon total adverse facts available (AFA) due to non-cooperation. A-Madeus cites Amanda I in support of the argument that: 1) the Department may not impute the non-cooperation of other parties onto a cooperative respondent by using AFA rates to find a "consistent history of dumping"[8]; and 2) a finding of no dumping by the mandatory respondent may suggest that non-investigated companies are similarly not dumping.[9] In line with Amanda I, A-Madeus maintains that there is no evidence on the record that it was dumping during the POR.

The petitioners contend that the Department should continue to assign A-Madeus a rate of 30.64 percent in the final results. According to the petitioners, the Act has a preference for not basing the all others rate on margins that are zero, de minimis, or based entirely on facts available, and, where all margins fall into one of these categories, the Act permits the Department to use "any reasonable method" for assigning the all-others rate. The petitioners note that: 1) the Department's current practice with respect to "any reasonable method" is to assign non-examined respondents the average of the most recently-calculated affirmative weighted-average dumping margins; and 2) assigning A-Madeus a rate from the 2012-2013 administrative review is consistent with this practice. The petitioners also agree with the Department's conclusion, stated in the Preliminary Results, that this is a reasonable reflection of the potential dumping margin for A-Madeus because the rate was obtained from the immediately preceding review.

The petitioners claim that A-Madeus overstates the legal effect of prior court rulings and understates the reasoning followed by the Department. With respect to the former point, the petitioners note that the CIT cases cited by A-Madeus are not binding on the Department beyond those particular proceedings. The petitioners argue that, in contrast to a CIT decision, the decision of the CAFC is precedent that binds a lower court and the Department, not only in the specific case before the court, but in all future cases. The petitioners note that the Department has continued to apply its "reasonable method" methodology since Amanda II and Albemarle, not only in this case but also recently in Lined Paper from India. [10] Further, the petitioner notes

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behavior").

[7] See Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons With Woven Selvedge from Taiwan, 75 FR 41804 (July 19, 2010) (Ribbons from Taiwan Final Determination), where the Department calculated zero margins for two mandatory respondents and 4.37 percent for the third.

[8] See Amanda I at 1381 ("…there is no basis in the statute for penalizing cooperative uninvestigated respondents due solely to the presence of non-cooperative uninvestigated respondents who receive a margin based on AFA…").

[9] Id., at 1380 ("that the mandatory respondents in the current review were found not to be engaged in dumping was evidence indicating that the responding separate rate Plaintiffs may also no longer be engaged in dumping").

[10] See Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26205 (May 7, 2014) (Lined Paper from India).

that, even though the CIT rejected the Department's methodology and, thus, issued remands in both Albemarle and Amanda II, the Department only complied with the remands "under protest."[11] Thus, the petitioners maintain that A-Madeus' reliance on Albemarle and Amanda II is misplaced.

On the record of this review, the petitioners find the Department's reasoning to be sound. According to the petitioners, the Department is correct in finding that a dumping margin from the immediately preceding review reasonably reflects the potential dumping margin of A-Madeus. The petitioners note that the record contains no evidence linking Roung Shu's and A-Madeus' pricing behaviors, nor does it contain any evidence that the product mix, prices, or sales expenses of the two companies are the same.

The petitioners also agree with the Department's finding of a history of dumping since the imposition of the order. While the petitioners discount the dumping activity found in the LTFV investigation (because that activity was based on old data which occurred prior to exporting under the discipline of an AD order), they note that parties in the most recent review continued to dump knowing that an AD order was in place. The petitioners find this recent dumping more probative of how a party might price its products in a subsequent review than pricing practices in effect prior to the issuance of the order.

Finally, the petitioners claim that A-Madeus mischaracterized how the Department used the AFA rates in its analysis. The petitioners note that the Department did not use these rates to determine the rate assigned to A-Madeus. Nonetheless, the petitioners maintain that the fact that those respondents failed to participate in the reviews strongly suggests that they recognized that their particular selling practices would result in a substantial dumping margin. Thus, the petitioners maintain that the total AFA rates do constitute record evidence of a history of dumping, as the Department held.

Department's Position

We agree with the petitioners that the Department should not diverge from the practice of excluding zero and de minimis margins when calculating the margin assigned to non-reviewed companies. Because the only rate calculated in this segment of the proceeding is zero, we have continued to assign A-Madeus a rate of 30.64 percent, because (1) it is the most recently calculated margin above zero or de minimis, (2) we do not have record data for the non-examined company, and (3) there is a consistent history of dumping under this order.

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not individually examine in an administrative review. Section 735(c)(5)(A) of the Act instructs

[11] See Final Results of Redetermination Pursuant to Court Remand (A-570-904), at 21 (January 10, 2014), which states "{i}n this litigation, we continue to disagree with the Court's holding in the *Remand Opinion and Order* and, consequently, have conducted this remand redetermination under protest."

that we are not to calculate an all-others rate using any zero or de minimis margins or any margins based on total facts available.[12] Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based on total facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents, including "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

In previous cases, the Department has determined that a "reasonable method" to use when the rates for the respondents selected for individual examination are zero, de minimis, or based entirely on facts available, is to assign non-examined respondents the average of the most recently-determined weighted-average dumping margins that are not zero, de minimis, or based entirely on facts available.[13] These rates may be from the investigation, a prior administrative review, or a new shipper review.

Based on the facts of this case, we determine that a reasonable method for determining the margin for the non-examined company in this review is the margin, other than those which are zero, de minimis, or based on total facts available, that we found for the most recent period in which there were such margins (i.e., Ribbons from Taiwan 2012-2013 Final Results).[14] We have determined that it is more reasonable in this review to use a calculated rate from the immediately preceding segment, as this method constitutes a contemporaneous examination of individually-reviewed respondents exclusive of zero, de minimis and facts available margins, and reasonably reflects the potential dumping margin for the non-selected company.[15] The Department finds that this margin comports with the requirements of the statute, given that no data on the record exists to determine whether the non-selected company's pricing behavior matches that of the mandatory respondent in the current review. Moreover, the statute does not require the Department to use data specific to the POR in establishing a rate for non-examined companies.[16] Nor does the statute require the Department to use data specific to the non-examined companies.[17]

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[12] See, e.g., First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 27994 (May 13, 2011).

[13] See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

[14] See Preliminary Results, and accompanying Preliminary Decision Memorandum at 13-15.

[15] Id.

[16] Indeed, the Court has sustained a determination issued by the Department that did not use "the most recent information," so long as the agency *considered* the detracting information in its analysis. See, e.g., Rhone Poulenc, Inc. and Rhone Poulenc Chimie De Base, S.A. v. United States, 899 F.2d 1135, 1189-90 (Fed. Cir. 1990) (where, in the context of determinations based on best information available, the precursor to the determinations based on facts available, the Court sustained the Department's decision not to use the most recent information); Atlantic Sugar, Ltd. v. United States, 744 F.2d 1556, 1562 (Fed. Cir. 1984) (explaining that the substantial evidence standard requires that the agency "tak[e] into account the entire record, including whatever fairly detracts from the substantiality of the evidence") (citations omitted).

[17] See section 735(c)(5) (explaining that the Department may use, among other data, margins calculated for individually-examined respondents).

We also note that the Department in recent cases has not applied a zero or de minimis rate as the "All Others" rate in market economy cases or as the separate rate in non-market economy cases.[18] As seen in these cases, the Department has found for case-specific reasons that using a calculated rate from a prior segment more reasonably reflects the potential dumping margins of non-selected companies than does a zero or de minimis rate from an ongoing segment because the margins from the previous review more accurately capture recent and potential pricing behavior of non-selected companies, given that these companies were not selected for individual examination and that there is no data on the record to determine whether the non-selected companies' pricing behavior matches that of the mandatory respondents in the ongoing review.

We disagree with A-Madeus that there is no consistent history of dumping in this case. We note that the Department has found dumping in every prior segment of this proceeding since the imposition of the AD order.[19] In fact, the Department has only computed one dumping margin which was zero or de minimis, and that rate was calculated for Roung Shu in this administrative review. While some of the post-order rates were based on AFA, we disagree that it would be appropriate to ignore these rates in analyzing whether a history of dumping exists. Rates based entirely on AFA still constitute affirmative determinations of dumping. Moreover, as the petitioners correctly point out, it is reasonable to presume that, had the companies to which the AFA rates were assigned been dumping at lower – or de minimis – rates, they would have participated in this proceeding.[20] Moreover, the Department's consideration of this history buttresses its interpretation of the statute in this case – namely, that it is reasonable to assign temporally proximate rates when dumping has existed consistently over the course of the order.[21] A-Madeus' reliance on Amanda I, Amanda II, and Albemarle are misplaced.

With respect to Amanda I and Amanda II, in the underlying review, the Department calculated the margins for the separate rate respondents based upon the margins from the original investigation prior to the imposition of the antidumping duty order.[22] Here, however, the

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[18] See, e.g., Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16; Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009), and accompanying Issues and Decision Memorandum at Comment 6; Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940, 51942 (August 19, 2011).

[19] See Narrow Woven Ribbons With Woven Selvedge From Taiwan: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 72825 (December 6, 2012); Narrow Woven Ribbons With Woven Selvedge From Taiwan: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 50377 (August 19, 2013); and Ribbons from Taiwan 2012-2013 Final Results.

[20] With respect to the rates from the LTFV investigation, significantly, the Department found dumping in that segment of the proceeding as well, which contributed to the issuance of an antidumping duty order in this proceeding.

[21] See Yangzhou Bestpak Gifts & Crafts Co. v. United States, 825 F. Supp. 2d 1346, 1352 (CIT 2012) ("With the benefit of the additional data and calculated margins in subsequent administrative reviews, Commerce develops an ever-evolving familiarity with industry pricing practice, which in turn permits Commerce to better evaluate (and the court to review) whether a separate rate 'reasonably reflects' commercial reality"), revoked in part, 716 F.3d 1370.

[22] See Amanda I, 647 F. Supp. 2d at 1381-82.

Department has selected a rate from the immediately preceding POR. Margins from administrative reviews are more reliable indicators of dumping behavior than those calculated during an investigation.[23] Moreover, in Amanda I, the court highlighted the history of zero or de minimis margins in past segments of the relevant antidumping duty order and afforded significant weight to that pattern of pricing behavior in past reviews in reaching its decision.[24] Here, on the other hand, the Department did not encounter a history of zero or de minimis margins in past segments.

As for Albemarle, the case is currently on appeal and pending before the Federal Circuit.[25] Therefore, there is currently no final and conclusive decision in Albemarle. Moreover, the CIT's holding in Albemarle was, in part, based on its finding that the margins assigned to the separate rate companies were not reflective of commercial reality.[26] The Federal Circuit in Nan Ya recently clarified the meaning of "commercial reality," stating that it represents no more than a reliable guidepost for a determination, and "must be considered against what the antidumping statutory scheme demands."[27] The Court held that a determination reflects "commercial reality" if it is consistent with the method provided in the statute.[28] As discussed above, due to the ambiguity of the statute, the Department has reasonably interpreted the statute and developed a reasonable method to assign a rate to non-examined companies. Therefore, using a rate from the prior review is reasonable when (1) all of the rates calculated for individually-investigated respondents are zero, *de minimis*, or based entirely upon facts available; (2) the rate that the Department pulls forward is temporally proximate to the subject review; and (3) there is a history of dumping under the order. Under these circumstances, the Department's interpretation governs.[29]

Finally, with respect to A-Madeus' argument that in the alternative, the Department should assign it the all-others rate of 4.37 percent based on the LTFV investigation, we also disagree. While this rate is affirmative, and thus it is less contemporaneous than the rate assigned to A-Madeus in the Preliminary Results. As a result, it is a less representative reflection of the rate at which NWR is currently being dumped in the United States. Further, this rate is no more

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[23] See Yangzhou Bestpak Gifts & Crafts Co. v. United States, 825 F. Supp. 2d 1346, 1352 (CIT 2012) ("With the benefit of the additional data and calculated margins in subsequent administrative reviews, Commerce develops an ever-evolving familiarity with industry pricing practice, which in turn permits Commerce to better evaluate (and the court to review) whether a separate rate 'reasonably reflects' commercial reality.")

[24] See Amanda I, 647 F. Supp. 2d at 1374-75, 1380 (explaining that "there is at least some evidence to suggest that Vietnamese shrimp producers changed their pricing behavior so as to comply with the antidumping order, as is the intention of such orders").

[25] See Albemarle Corporation v. United States, No. 2015-1288, -1289, -1290 (Fed. Cir. 2015).

[26] See Albemarle, 931 F. Supp. 2d at 1291.

[27] See Nan Ya Plastics Corp. v. United States, 810 F.3d 1333, 1343 (Fed. Cir. 2016) (Nan Ya).

[28] Id., at 1344.

[29] Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 982 (2005) ("{J}udicial construction of a statute trumps an agency construction otherwise entitled to Chevron deference only if the . . . court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion.").

specific to A-Madeus than the rate assigned in the instant review. For these reasons, we find no justification for departing from our practice, as A-Madeus requests.

Thus, we find that a reasonable method in the instant review is to assign to the non-reviewed company, A-Madeus, the most recent rate that was not calculated using zero, de minimis or total facts available. Pursuant to this method, we are assigning a rate of 30.64 percent to A-Madeus.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above position in these final results. If this recommendation is accepted, we will publish the final results of the review and the final weighted-average dumping margins for A-Madeus and Roung Shu in the Federal Register.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

11 APRIL 2016
(Date)