

Navneet Publications (India) Ltd. v. United States
Court No. 13-00204; Slip Op. 14-87 (CIT July 22, 2014)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (Department) prepared these final remand results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or the “Court”) in *Navneet Publications (India) Ltd. v. United States*, 999 F. Supp. 2d 1354 (CIT 2014) (Remand Opinion and Order). These final remand results concern *Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review; 2010–2011*, 78 FR 22232 (April 15, 2013) (*Final Results*) and the accompanying Issues and Decision Memorandum at Comment 5. The CIT remanded the Department’s calculation of the 11.01 percent non-selected rate in the *Final Results*, in which the Department set the non-selected rate equal to the simple average of the two mandatory respondents’ zero rates and two (out of four) of the 22.02 percent adverse facts available (AFA) rates assigned to the uncooperative respondents, who failed to respond to the Department’s quantity and value (Q&V) questionnaire.

In its Remand Opinion and Order, the Court remanded the final results to the Department, holding that the 11.01 percent non-selected rate was not supported by substantial evidence and did not reflect the economic reality of the non-selected respondents. While the Department respectfully disagrees with the Court, it complies with the Court’s order under protest.¹

On November 10, 2014, the Department issued the *Draft Remand*.² In the *Draft Remand*, pursuant to the Court’s Remand Opinion and Order, we reconsidered, and under respectful

¹ See *Viraj Group Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

² See Draft Results of Redetermination Pursuant to Court Remand, *Navneet Publications (India) Ltd. v. United States*, Court No. 13-00204; Slip Op. 14-87 (CIT July 22, 2014) (*Draft Remand*).

protest, we revised, the non-selected rate assigned to the uninvestigated cooperative respondents. Specifically, we assigned a non-selected rate of 0.50 percent, which is the minimum positive dumping margin the Department assigns in an administrative review, *i.e.*, the threshold below which the Department treats any dumping margins as *de minimis* in administrative reviews.³

On November 17, 2014, Navneet Education Ltd. (formerly known as Navneet Publications (India) Ltd.) (Navneet) and the Association of American School Paper Suppliers (hereinafter referred to as Petitioners) submitted comments concerning the *Draft Remand*.

For the reasons discussed below and pursuant to the direction from the Court, under respectful protest we have continued to assign a rate of 0.50 percent to the uninvestigated cooperative respondents.

B. BACKGROUND

The Final Results

In the *Final Results*, the Department calculated *de minimis* margins for the two mandatory respondents, Riddhi Enterprises, Ltd. (Riddhi) and SAB International (SAB), and assigned as total AFA a margin of 22.02 percent to four firms that failed to respond to the Department's Q&V questionnaire. For the 51 remaining uninvestigated cooperative respondents (also referred to as the non-selected respondents) the Department assigned a margin of 11.01 percent, which was the rate equal to the simple average of the two mandatory respondents' zero rates and the 22.02 percent AFA rates assigned to two (out of four) of the uncooperative respondents, who failed to respond to the Department's Q&V questionnaire.⁴

³ See 19 CFR 351.106(c)(1) (In making any determination other than a preliminary or final antidumping or countervailing duty determination in an investigation, the Secretary will treat as *de minimis* any weighted-average dumping margin or countervailable subsidy rate that is less than 0.5 percent *ad valorem*, or the equivalent specific rate).

⁴ See *Final Results*, and accompanying Issues and Decision Memorandum at Comment 5.

In so doing, the Department explained that when calculating the margin for non-selected respondents (non-selected rate), the Department looks to section 735(c)(5) of the Tariff Act of 1930, as amended (the “Act”) for guidance, which provides instructions for calculating the all-others margin in an investigation. Section 735(c)(5)(A) of the Act provides that when calculating the all-others margin, the Department will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total facts available. We further explained that the Department’s normal practice is to average the margins for selected respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available.⁵ We also explained that section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis* or based on total facts available, the Department may use “any reasonable method” for assigning a margin to non-selected respondents, and that one method contemplated by section 735(c)(5)(B) of the Act is “averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.”⁶

In the *Final Results*, we explained that the Department determined that a “reasonable method” to use when the margins of selected mandatory respondents are zero or *de minimis* is to assign non-selected respondents the average of the most recently determined margins that are not zero, *de minimis*, or based entirely on facts available (which may be from a prior review or a new shipper review or the investigation).⁷ We further explained that, if a non-selected respondent has its own calculated margin that is contemporaneous with or more recent than such previous

⁵ *Id.*, citing to *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.

⁶ See *Final Results*, and accompanying Issues and Decision Memorandum at Comment 5.

⁷ *Id.*, citing to *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191, 47194 (September 15, 2009) (*Warmwater Shrimp from Vietnam*).

margins, the Department applies that calculated margin to the non-selected respondent, including when that margin is zero or *de minimis*.⁸

In the *Final Results*, we explained that all prior calculated margins in the proceeding were calculated using the Department's zeroing methodology and that the Department stated that it will not use its zeroing methodology in administrative reviews with preliminary determinations issued after April 16, 2012.⁹ Therefore, in the *Final Results*, the Department found it was unable to rely on weighted-average margins calculated in prior segments for the non-selected rate in this review and, thus, had to rely on another reasonable method for assigning the non-selected rate.¹⁰

In the *Final Results*, the Department explained that in determining the non-selected rate, it had to account for the fact that the Department was not able to conduct its respondent selection analysis based on responses to all of the Q&V questionnaires issued due to non-participation by certain respondents and, as a result, the Department was obligated to conduct its respondent selection analysis based on an incomplete universe of potential respondents. Under these circumstances, the Department determined it could not reasonably conclude that the *de minimis* rates calculated for the two mandatory respondents in the instant review alone could serve as a proper basis for determining a rate for the other respondents that received and responded to the Q&V questionnaires. The Department further explained that the fact that there were other companies that might otherwise have been selected for review but chose not to respond to the Q&V questionnaires was also relevant to the Department's analysis.¹¹

⁸ See *Final Results*, and accompanying Issues and Decision Memorandum at Comment 5, citing to *Warmwater Shrimp from Vietnam*.

⁹ See *Final Results*, and accompanying Issues and Decision Memorandum at Comment 5, citing to *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification*).

¹⁰ *Id.*

¹¹ *Id.*

Therefore, in the *Final Results*, we determined that a reasonable method for assigning a margin to non-selected respondents in this review was to utilize the weighted-average dumping margins calculated for the two mandatory respondents (zero percent) and the AFA rate assigned to the four uncooperative companies (22.02 percent). We explained that by doing so, we accounted for the fact that the Department was precluded from conducting its respondent selection analysis based on responses to all of the Q&V questionnaires issued. We further explained that we limited the number of rates used in the average that are based on AFA to the same number of companies that we determined we could reasonably examine in this review, which was two. We considered this approach reasonable because, without the requested information from these companies, all that the Department knew was that it may have selected up to two of the companies as mandatory respondents.¹²

On this basis, the Department assigned an 11.01 percent rate to the 51 non-selected respondents.

The Court's Remand Opinion and Order

Citing *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370 (Fed. Cir. 2013), the Court rejected plaintiffs' claim that the Department may not incorporate an AFA rate into the non-selected rate calculation in administrative reviews.¹³ However, the Court remanded the final results to the Department, holding that the 11.01 percent non-selected rate was not supported by substantial evidence.¹⁴ Specifically, the Court was unpersuaded by the Department's explanation that it could not conclude that the two mandatory respondents' zero rates approximated the pricing behavior of cooperative, uninvestigated respondents because it

¹² *Id.*

¹³ See *Navneet Publications (India) Ltd. v. United States*, 999 F. Supp. 2d 1354, 1360 (citing *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370 (Fed. Cir. 2013)).

¹⁴ *Id.* at 1363-66.

could not conduct a full respondent selection analysis without possessing complete Q&V responses.¹⁵ The Court observed that the record was limited, in part, due to the Department's decision to individually investigate only two companies.¹⁶ The Court noted that "Commerce cited no evidence below suggesting that a rate of 11.01% reflects the economic reality of all-others rate respondents."¹⁷ Further, the Court found that the 11.01 percent non-selected rate represented an historic high for cooperative respondents in the proceeding when contrasted with the historically low rates throughout the proceeding.¹⁸

On this basis, the Court concluded that the Department must reconsider the methodology that it used to calculate the non-selected rate applied in the *Final Results*.¹⁹

Analysis

In light of the Court's holding concerning the 11.01 percent non-selected rate applied in the *Final Results*, under respectful protest we revised our methodology for calculating the non-selected rate and assigned a rate of 0.50 percent *ad valorem* to each of the plaintiffs.

As discussed above, we do not have available any above *de minimis* margins calculated for mandatory respondents that we may use as the basis for the non-selected rate. Further, any margins calculated for mandatory respondents in administrative reviews prior to the review period at issue incorporated the Department's zeroing methodology and, thus, are not suitable for use in calculating the non-selected rate in the instant review.²⁰ However, four companies among those to whom we sent quantity and value questionnaires chose not to provide the data requested, which was necessary for the Department to identify the exporters accounting for the largest

¹⁵ *Id.* at 1363.

¹⁶ *Id.*

¹⁷ *Id.* at 1364.

¹⁸ *Id.* at 1364-65.

¹⁹ *Id.* at 1366.

²⁰ See *Final Modification*.

volume of exports which would be selected for individual examination.²¹ Accordingly, it is reasonable to infer that these four companies engaged in dumping during the review period (and the application of total AFA to these companies has not been disputed). Further, although the final weighted-average margins of the two mandatory respondents, Riddhi and SAB, are *de minimis*, each had transaction-specific margins that exceeded 0.50 percent *ad valorem*,²² which is the minimum positive dumping margin the Department assigns in an administrative review.²³ Therefore, we find that there is a basis to determine that some amount of dumping, in fact, occurred during the review period at issue and, thus, that a dumping margin above *de minimis* may be applied to the uninvestigated respondents who sold subject merchandise to the United States during the period of review.

In the *Final Results*, the Department determined that for purposes of deriving the non-selected rate, it was reasonable to average the rates of the mandatory respondents with the AFA rates assigned to those companies that failed to participate in the review (*e.g.*, those companies that failed to submit quantity and value questionnaires). However, the Court held that the resulting rate was not based on substantial evidence. The Court's holding is based, in part, on the lower margins assigned to the mandatory respondents in prior reviews. Accordingly, we determine not to apply an average of the unselected rates and the rates of the uncooperative unselected companies. Rather, under respectful protest, we determine to apply a rate of 0.50

²¹ See Memorandum to the File from Cindy Robinson, Senior International Trade Compliance Analyst, AD/CVD Operations, "Customs and Border Protection Data for Selection of Respondents for Individual Review," at 4-6, which indicates that the four companies in question had reviewable entries during the POR; see also *Certain Lined Paper Products From India: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 61381 (October 9, 2012) (*Preliminary Results*), and accompanying Decision Memorandum at 14-15, in which the Department assigned these four companies a dumping margin based on total AFA as a result of the companies' failure to submit a Q&V questionnaire response, and *Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 22232, 22233 (April 15, 2013), and accompanying Issues and Decision Memorandum, in which the Department continued to apply AFA to these four firms.

²² See Memorandum to the File from Cindy Robinson, Analyst, Office III, Operations, "Margin Output Data for Riddhi Enterprises, Ltd. (Riddhi) and SAB International (SAB)," dated concurrently with this remand determination.

²³ See 19 CFR 351.106(c)(1).

percent, the minimum positive dumping margin that the Department can assign in an administrative review.

Summary and Analysis of Interested Party Comments on Draft Remand

Navneet's Comments

The Court's holding makes two main demands, and one strong implication. Its demands are that the rate assigned to the non-selected companies be supported by "substantial evidence," and that the rate reflect the "economic reality" and "pricing behavior" of the non-selected respondents.²⁴ The strong implication is that the rate that complies with those two demands would be *de minimis*, because the two mandatory respondents received *de minimis* margins.

The Court confirmed existing practice allowing the Department to rely on the investigation-based rules of section 735(c)(5) of the Act for purposes of calculating the non-selected rate in administrative reviews.²⁵ The rules provided under section 735(c)(5) of the Act provide discretion to the Department in situations where "the estimated weighted average dumping margins are zero, *de minimis*, or are determined entirely" pursuant to AFA. Under this provision of the Act, the Department is not constrained to use any specific methodology or outcome. Further, any such "reasonable" methodology need not necessarily result in an above *de minimis* outcome. However, based on the *Draft Remand*, the Department appears to be under the impression it cannot assign a *de minimis* margin to the non-selected respondents.

There is a stark difference between the all others rate calculated in investigations and the non-selected rate applied in administrative reviews. The former is merely provisional and temporary whereas the latter is final and results in actual payments of duties to U.S. Customs and Border Protection (CBP). Further, the language in section 735(c)(5)(A) of the Act, disfavoring

²⁴ See *Navneet Publications (India) Ltd.*, 999 F. Supp. 2d at 1363-64, *e.g.*, Slip Op. 2014-87 at 15.

²⁵ Slip. Op. 2014-87 at 9-10.

the use of zero or *de minimis* margins in the all others rate in investigations, does not ban the use of a *de minimis* margin where, as here, all the margins of the mandatory respondents are *de minimis*. In fact, the application of a *de minimis* margin to non-reviewed respondents is statutorily required in an investigation in which all individually reviewed respondents were assigned zero or *de minimis* margins. That is, in investigations where all the mandatory respondents are *de minimis*, the investigation is terminated for all parties, including those respondents that were not individually examined. Thus, an all-zero average margin is explicitly recognized in the statute as a potentially reasonable methodology, even in investigations.

The Department's approach in *Honey from Argentina* demonstrates that the Department has discretion to adopt such a result in the instant proceeding.²⁶ In *Honey from Argentina*, the Department assigned the margin calculated for the mandatory respondents to the non-reviewed respondents.²⁷

In its holding, the Court strongly implies that the proper rate to assign the non-selected companies is a *de minimis* margin. Specifically, the Court suggests that, given that the Department deemed the two mandatory respondents to be representative of the industry as a whole, any margin assigned to the industry that does not reflect the margin calculated for the mandatory respondents would be "aberrational."²⁸ Further, the Court noted that the relative average unit values (AUVs) of the mandatory respondents, as opposed to the non-selected respondents, provides "evidence suggesting that other respondents were also not dumping."²⁹

In the alternative, if the Department is in fact statutorily required to impose a positive margin on the non-selected respondents, then Navneet can conditionally accept the 0.50 percent

²⁶ See *Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18 2012) (*Honey from Argentina*) and accompanying Issues and Decision Memorandum at Comment 1.

²⁷ *Id.*

²⁸ See *Navneet Publications (India) Ltd.*, 999 F. Supp. 2d at 1365.

²⁹ *Id.* at 1365-66.

margin assigned to the non-selected respondents in the *Draft Remand*. In this regard, no higher margin can be considered reasonable as evidenced by the relatively low non-selected margins calculated in prior reviews, which were approximately 3.00 percent or less.³⁰ Further, these prior margins were necessarily exaggerated given that the Department calculated these margins using the zeroing methodology. Any margin higher than the 0.50 percent would be speculative and just as “untethered” to reality as the 11.01 percent rate from the *Final Results* that was rejected by the Court.

The margin that is ultimately accepted by the Court will apply retroactively to entries made during the fifth review period (*e.g.*, September 1, 2010 through August 31, 2011), but will also apply to the entries made subsequent to the date of the original *Final Results*. The Court enjoined liquidation of the entries made during the fifth review period, but also issued an injunction against liquidation of a portion of Navneet’s entries during the seventh review period (*e.g.*, the administrative review covering the period September 1, 2012 through August 31, 2013), that would otherwise have been liquidated at the cash deposit rate set by the fifth review because Navneet was not a respondent in the seventh review. Further, the Court’s injunction specifies that the revised non-selected rate that ultimately results from the fifth review redetermination should be applied when liquidating entries made by Navneet during the seventh review period.³¹ Thus, the Department’s final remand should explicitly implement the Court’s instruction in this regard.

Petitioners’ Comments

The Department should continue to impose an 11.01 percent margin on the non-selected respondents. Because the margins for the mandatory respondents were *de minimis* and the

³⁰ *Id.* at 1364-65.

³¹ See Order of Preliminary Injunction in *Navneet Publications (India) Ltd. v. United States*, Court No 13-00204, Slip Op. 2014-119 (October 6, 2014).

margins for the four companies that failed to submit a Q&V response were AFA, the Department, consistent with its practice, relied upon the “any reasonable method” provision under section 735(c)(5)(B) of the Act for purposes of assigning the non-selected rate. This approach was reasonable because had the four non-responsive companies that received AFA cooperated, up to two of these companies may have been selected as mandatory respondents. Moreover, as mandatory respondents, they may have received a margin that was even higher than the 22.02 percent AFA margin. Indeed, the fact that the potential threat of an AFA margin for failure to cooperate (which in prior segments have exceeded 72 percent) was insufficient to induce cooperation from these four companies suggests that they have been dumping at even higher margins during the POR. Further, the 11.01 percent margin is significantly less than the 22.02 percent transaction-specific margin that was calculated for one of the mandatory respondents in this review and, thus, is well within the realm of a reasonable non-selected rate.

The record fails to support the use of a 0.50 percent margin as the non-selected rate. The reasons the Department cites for using this margin in the *Draft Remand* are insufficient. As noted above, there is a strong basis to conclude that these uncooperative producers may have received a margin even higher than 22.02 percent had they been individually investigated.

If the Department declines to impose an 11.01 percent margin, then it should instead impose a margin of 7.34 percent, which reflects the simple average of the margins calculated for the two mandatory respondents (zero percent) and the AFA margin assigned to the four uncooperative companies. A margin of 7.34 percent is only slightly higher than the non-selected rates calculated in prior segments of the proceeding. Further, unlike the 0.50 percent margin utilized in the *Draft Remand*, the 7.34 percent margin is a function of margins calculated in the underlying proceeding (*i.e.*, the zero percent margins calculated for the two mandatory

respondents and the 22.02 percent AFA margin, which is itself equal to the highest transaction-specific margin calculated for one of the mandatory respondents).

Additionally, the fact that the Department recently assigned a preliminary dumping margin of 7.79 percent to a mandatory respondent in the seventh review reinforces the reasonableness of a 7.34 percent non-selected margin.³²

Department's Position

Under section 735(c)(5)(A) of the Act, the dumping margin for separate rate respondents is normally “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 {on the basis of facts available}.” However, when the dumping margins established for all individually examined respondents are zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act permits the Department to “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.”

To determine a reasonable method to establish the non-selected margin, the Department first examined the margin calculated for the mandatory respondents who cooperated fully during the course of the underlying proceeding. The margins calculated for the mandatory respondents were *de minimis* in the *Final Results*.³³ Conversely, four companies failed to respond to the

³² See *Certain Lined Paper Products from India: Notice of Partial Rescission and Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 60450, 60451 (October 7, 2014).

³³ See *Final Results*, 78 FR at 22234.

Department's Q&V questionnaire and, thus, because they did not act to the best of their ability, the Department assigned each of them an AFA margin of 22.02 percent.³⁴

By refusing to respond to the Department's Q&V questionnaire, the four non-cooperating companies left the record void of the data necessary not only to calculate an accurate dumping margin for them, but also to allow the Department to choose them as mandatory respondents. The Department issued Q&V questionnaires to companies for which CBP data showed entries which are subject to the antidumping duty order during the period of review.³⁵ It is thus reasonable to infer that these companies' dumping margins during the period of review were not zero or *de minimis*, and that, if the Department had received complete information, the Department may have chosen one of these companies as a mandatory respondent.³⁶ The Department reasonably infers that an uncooperative respondent would have cooperated if it could have obtained such a low rate.³⁷

Similarly, the Court of Appeals for the Federal Circuit (CAFC) has held that it can be presumed that a respondent will make a knowing and rational decision whether to respond to the

³⁴ *Id.*

³⁵ See *Preliminary Results* and accompanying Decision Memorandum at 3.

³⁶ See *Baroque Timber Industries (Zhongshan) Company, Limited, et al. v. United States, Consol.*, 971 F. Supp. 2d 1333, 1343 (CIT 2014) (stating that "Commerce may draw reasonable inferences from the failure of uncooperative respondents to provide evidence of the size, quantity, and value of their sales...").

³⁷ See *Changzhou Wujin Fine Chemical Factory Co., Ltd. v. United States*, 942 F. Supp. 2d 1333 (CIT 2013) (affirming the Department's finding that the separate rate companies had above *de minimis* rates without assigning an exact antidumping duty rate); see, e.g., *Laminated Woven Sacks From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 76 FR 14906, 14910 (March 18, 2011) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190-91 (Fed. Cir. 1990) (*Rhone Poulenc*) and *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 24 CIT 841, 848 (CIT 2000)); *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review*, 75 FR 34976, 34979 (June 21, 2010).

the non-selected respondents' economic reality and relevant factual circumstances of the review to the results of this remand redetermination.

We disagree with Navneet's argument that section 735(c)(5) of the Act compels the Department to assign *de minimis* margins to non-selected companies in administrative reviews when the margins for the mandatory respondents are all zero percent or *de minimis*. The scenario Navneet describes involves investigations where all mandatory respondents fully cooperated and ultimately received *de minimis* margins and where no other firm received an above *de minimis* margin. Navneet is correct in noting that in such situations the Department terminates the *investigation* not only for the mandatory respondents but all other firms as well.⁴²

However, in an investigation in which, for one reason or another, all mandatory respondents received zero or *de minimis* margins but another group of firms received margins based entirely on AFA, the Department would instead reach an affirmative finding.⁴³ Here, the Department solicited Q&V data to select the mandatory respondents in the review. The two firms the Department selected for individual review fully cooperated and ultimately received *de minimis* margins, whereas the firms that failed to submit a response to the Q&V questionnaire received margins based on AFA. Thus, the presence of firms that received total AFA margins in the review at issue constitutes a crucial distinction from the scenario described by Navneet.

We also disagree with Navneet that the Department's approach in *Honey from Argentina* should compel the Department to assign the non-selected respondents a *de minimis* margin in the review at issue. In *Honey from Argentina*, the Department based its decision largely on the fact

⁴² See, e.g., *Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 54965 (September 15, 2014).

⁴³ See *Narrow Woven Ribbons with Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808, 41811 (July 19, 2010), see also *Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination*, 79 FR 61602, 61604 (October 14, 2014).

that all mandatory respondents in the three previous administrative reviews received *de minimis* margins.⁴⁴ The same cannot be said with regard to the proceeding at issue.⁴⁵

Navneet argues that an injunction from the Court specifies that the revised non-selected rate that ultimately results from the fifth review redetermination should be applied when liquidating entries made by Navneet during the seventh review period.⁴⁶ In this regard, and as evidenced by the attached instruction that the Department transmitted to CBP, the Department is complying with the injunction issued by the Court on October 6, 2014.⁴⁷

Concerning Petitioners' comments, we decline to apply the 11.01 percent rate as the Court rejected the Department's reasoning for use of this rate in the *Final Results*, and Petitioner has not provided additional reasoning to support that rate pursuant to the Court's opinion. Further, as explained above, based on the Court's holding in the Remand Opinion and Order, we find that utilizing the Department's *de minimis* threshold in administrative reviews as the basis for the margin assigned to companies not subject to individual review constitutes a reasonable method that is grounded in the economic reality of the non-selected respondents in this review. We also decline to adopt Petitioners' alternative argument to apply a 7.34 percent margin, by averaging the AFA rate with the two mandatory respondent rates because it is only slightly higher than the non-selected rates from prior reviews. We do not believe this rate overcomes the Court's holding concerning the economic reality of the non-selected respondents in light of prior calculated rates in this proceeding. Nor do we agree with Petitioners that the preliminary margin

⁴⁴ See *Honey from Argentina* and accompanying Decision Memorandum at Comment 1.

⁴⁵ See, e.g., *Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review*, 77 FR 14729, 14731 (March 13, 2012), *Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review*, 75 FR 7563 (February 22, 2010), and *Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review*, 74 FR 17149 (April 14, 2009).

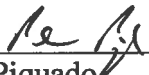
⁴⁶ See Order of Preliminary Injunction in *Navneet Publications (India) Ltd. v. United States*, Court No 13-00204 (October 6, 2014).

⁴⁷ See Attachment I for the instructions the Department transmitted to CBP regarding the Court's injunction.

of 7.79 percent from the subsequent seventh review period, a rate that does not reflect a final decision by the Department, supports the reasonableness of applying a 7.34 percent rate as the non-selected margin in the fifth review.

Conclusion

In keeping with the Court's holding, and under respectful protest, we revised the non-selected rate assigned to the uninvestigated, cooperative respondents in the administrative review at issue from 11.01 percent to 0.50 percent *ad valorem*.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 DECEMBER 2014

Date

ATTACHMENT I

MESSAGE NO: 4282301 MESSAGE DATE: 10/09/2014

MESSAGE STATUS: Active CATEGORY: Antidumping

TYPE: INJ-Injunction PUBLIC NON-PUBLIC

SUB-TYPE: PRELIM-Preliminary

FR CITE:

FR CITE DATE:

REFERENCE
MESSAGE #

(s):

CASE #(s): A-533-843

EFFECTIVE DATE: 10/06/2014 COURT CASE #: 13-00204

PERIOD OF REVIEW: TO

PERIOD COVERED: 04/15/2013 TO 08/31/2013

LIFTING OF SUSPENSION DATE:

TO: { DIRECTORS OF FIELD OPERATIONS, PORT DIRECTORS }

FROM: { DIRECTOR AD/CVD & REVENUE POLICY & PROGRAMS }

RE: Preliminary injunction on certain lined paper products from India for the period 04/15/2013 through 08/31/2013 (A-533-843), court number 13-00204

1. On 10/06/2014, the U.S. Court of International Trade issued a preliminary injunction (PI) enjoining liquidation of entries identified in paragraph 2 which are subject to the antidumping duty order on certain lined paper products from India (A-533-843) for the period 04/15/2013 through 08/31/2013. This PI was issued in connection with court number 13-00204.

2. This PI enjoins liquidation of entries of certain lined paper products from India produced and/or exported by Navneet Publications (India) Ltd., which: (1) were entered, or withdrawn from warehouse, for consumption during the period 04/15/2013 through 08/31/2013, inclusive; (2) are currently classifiable under HTSUS subheadings: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000; (3) paid cash deposits at the rate for non-selected cooperative respondents (i.e., all-others rate) established by the administrative review, the final results of which were published as Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 22232 (04/15/2013); and (4) remain unliquidated as of 5:00 p.m. Eastern Time on the day after the day on which copies of this order are personally served on Commerce's APO Docket Center.

3. Effective 10/06/2014 (the date the Court issued the PI), no liquidation may be made for entries referred to in paragraph 2 which remain unliquidated as of 5:00 p.m. Eastern Time on the day after the day on which copies of this order are personally served on Commerce's APO Docket Center. Commerce's APO Docket Center was served with the above-referenced injunction on 10/07/2014. Any such entries that are set for liquidation must be unset immediately. Continue to suspend liquidation of these entries until liquidation instructions are issued.

4. Effective immediately, CBP is instructed to follow the terms of the PI.

5. Liquidation instructions for entries affected by this PI have not yet been issued.

6. If there are any questions by the importing public regarding this message, please contact the
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Call Center for the Office of AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce at (202) 482-0984. CBP ports should submit their inquiries through authorized CBP channels only. (This message was generated by OIII: CR.)

7. There are no restrictions on the release of this information.

Michael B. Walsh

COMPANY DETAILS

*Party Indicator Value

I= Importer, M= Manufacturer, E= Exporter, S= Sold to Party