

Changzhou Hawd Flooring Co., Ltd., et al. v. United States  
Consol. Court No. 12-00020, Slip Op. 14-95 (August 14, 2014)  
**FINAL RESULTS OF REDETERMINATION**  
**PURSUANT TO COURT ORDER**

**I. SUMMARY**

The U.S. Department of Commerce (the “Department”) prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“the CIT” or “Court”) in *Changzhou Hawd*.<sup>1</sup> This litigation pertains to certain issues in the investigation of multilayered wood flooring (“MLWF”) from the People’s Republic of China (“PRC”).<sup>2</sup> Baroque Timber Industries (Zhongshan) Co., Ltd., Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Limited, Samling Global USA, Inc., Samling Riverside Co., Ltd., and Suzhou Times Flooring Co., Ltd. (collectively, “Samling”), Zhejiang Layo Wood Industry Co., Ltd. (“Layo Wood”), and Zhejiang Yuhua Timber Co., Ltd. (“Yuhua”) are the mandatory respondents. The plaintiff and plaintiff-intervenors in this action include the separate rate respondents Changzhou Hawd Flooring Co. (“Changzhou Hawd”), Fine Furniture (Shanghai) Ltd. (“Fine Furniture”), and Armstrong Wood Products (Kunshan) Co., Ltd. (“Armstrong”). The full list of separate rate companies involved in this litigation include Changzhou Hawd, Fine Furniture, and Armstrong, as well as Dunhua City Jisen Wood Industry Co., Ltd. (“Jisen

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<sup>1</sup> See *Changzhou Hawd Flooring Co., Ltd., et al. v. United States*, Consol. Court No. 12-00020, Slip Op. 14-95 (August 14, 2014) (“*Changzhou Hawd*”).

<sup>2</sup> See *Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (“*Final Determination*”), as amended by *Multilayered Wood Flooring From the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 76 FR 76690 (December 8, 2011) (“*Amended Final Determination*”).

Wood”), Dunhua City Dexin Wood Industry Co., Ltd. (“Dexin Wood”), Dalian Huilong Wooden Products Co. (“Huilong”), Kunshan Yingyi-Nature Wood Industry Co., Ltd. (“Yingyi-Nature”), and Karly Wood Product Limited (“Karly Wood”) (hereafter “separate rate respondents” or “separate rate plaintiffs”).

The CIT granted the Department’s request for a voluntary remand to determine whether the Department should conduct a “limited investigation” of the eight separate rate respondents. In the Department’s second redetermination, it assigned seven of the eight separate rate respondents<sup>3</sup> a rate above *de minimis*, but found that it was unnecessary to calculate an exact rate for these separate rate respondents because any rate assigned for the investigation stage of the proceeding has already been superseded by the rates assigned to these companies as a result of the first administrative review.<sup>4</sup> For the eighth separate rate respondent, Changzhou Hawd, which certified that it had no shipments of subject merchandise to the United States during the first administrative review period, the Department found in its second redetermination that it must issue a questionnaire and fully investigate this respondent in order to assign it its own calculated rate.<sup>5</sup>

## **II. REMANDED ISSUE**

### **Feasibility of Conducting a “Limited Investigation” of the Separate Rate Respondents**

#### **A. Background**

Following a telephone conference between the Court and counsel for the separate rate respondents, CAHP,<sup>6</sup> and the Department, in which the idea of conducting a “limited

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<sup>3</sup> Fine Furniture, Armstrong, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature, and Karly Wood.

<sup>4</sup> See Final Results of Redetermination Pursuant to Court Order, *Baroque Timber Industries (Zhongshan) Company, Limited, et al. v. United States*, dated May 29, 2014 (“Second Redetermination”).

<sup>5</sup> See Second Redetermination.

<sup>6</sup> The Coalition for American Hardwood Parity (“CAHP”), petitioner in the underlying investigation.

investigation” of all eight separate rate respondents was introduced by the Court, the Department requested a voluntary remand in order to determine whether it could conduct, and what might constitute, a “limited investigation” of the eight separate rate plaintiffs. In its motion for a voluntary remand, the Department noted that it “may request a remand (without confessing error) in order to reconsider its previous position,” and that if its “concern is substantial and legitimate, a remand is usually appropriate.”<sup>7</sup> The Department argued that a substantial and legitimate concern existed in this case, and noted that the Court itself suggested that the Department consider whether a “limited investigation” was possible or appropriate.<sup>8</sup> The Department did not doubt the correctness of its second redetermination but, rather, wished to reconsider its second redetermination in light of the Court’s suggestion. The Court granted this motion for a voluntary remand despite the opposition of the separate rate plaintiffs.

Because neither the Tariff Act of 1930, as amended (the “Act”), nor the Department’s regulations provide any method of conducting a “limited investigation,”<sup>9</sup> we attempted to gather additional information from interested parties to explore the concept of a “limited investigation” and determine what such an examination might entail. We issued a letter to the interested parties, which asked them to address the following issues: (1) what data should be collected from the separate rate respondents in a “limited investigation” and how that data should be used; (2) whether the Department should verify any data submitted by the separate rate respondents and how such a verification should be conducted; and (3) what case schedule the Department should follow in a “limited investigation,” including timeframes and deadlines for the issuance of initial and supplemental questionnaires, the preliminary determination, the verification of

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<sup>7</sup> See Defendant’s Motion for a Voluntary Remand, filed June 30, 2014, at 2, citing *SKF USA, Inc. v. United States*, 254 F3d 1022, 1029 (Fed. Cir. 2001).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> See sections 731-739 of the Act; see also 19 CFR 351.

respondents' data, and the final determination.<sup>10</sup> We received comments from CAHP, the eight separate rate respondents, and interested party Lumber Liquidators Services, LLC ("Lumber Liquidators"),<sup>11</sup> as well as rebuttal comments from CAHP and the eight separate rate respondents.<sup>12</sup>

CAHP's view of a "limited investigation" is that the separate rate respondents should be required to respond, in full, to sections A, C, and D of the Department's antidumping questionnaire for the full period of investigation ("POI"), but that the Department could limit its requests for additional information to a single round of supplemental questionnaires.<sup>13</sup> CAHP stated that, in a "limited investigation," the Department would provide each of the separate rate respondents the opportunity to submit surrogate country and surrogate value information and comments, and the Department would conduct on-site verification of at least two of the separate rate respondents which submit questionnaire responses.<sup>14</sup> CAHP stated that use of "facts available" and "adverse facts available" ("AFA") would apply in the same way as in a full

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<sup>10</sup> See Letter from the Department, "Multilayered Wood Flooring from the People's Republic of China: Remand Questions on Limited Individual Investigation," dated August 19, 2014.

<sup>11</sup> See Submission from CAHP, "Multilayered Wood Flooring from the People's Republic of China," dated August 26, 2014; submission from Fine Furniture, "Multilayered Wood Flooring from the People's Republic of China: Comments on Questions in Department of Commerce's August 19, 2014 Letter," dated August 26, 2014; submission from Armstrong, "Multilayered Wood Flooring from the People's Republic of China (4/1/10-9/30/10): Response of Armstrong Wood Products (Kunshan) Co., Ltd. to Limited Investigation Supplemental Questionnaire," dated August 26, 2014; submission from Changzhou Hawd, Huilong, Jisen Wood, Dexin Wood, Yingyi-Nature, and Karly Wood, "Multilayered Wood Flooring from the People's Republic of China: Response to Limited Investigation Supplemental Questionnaire," dated August 26, 2014; and submission from Lumber Liquidators, "Remand Questions on Limited Individual Investigation," dated August 26, 2014.

<sup>12</sup> See Submission from CAHP, "Multilayered Wood Flooring from the People's Republic of China," dated August 29, 2014; submission from Fine Furniture, "Multilayered Wood Flooring from the People's Republic of China: Rebuttal to CAHP's Comments on Questions in Department of Commerce's August 19, 2014 Letter," dated August 29, 2014; submission from Armstrong, "Multilayered Wood Flooring from the People's Republic of China (4/1/10-9/30/10): Rebuttal Comments of Armstrong Wood Products (Kunshan) Co., Ltd.," dated August 29, 2014; and submission from Changzhou Hawd, Huilong, Jisen Wood, Dexin Wood, Yingyi-Nature, and Karly Wood, "Multilayered Wood Flooring from the People's Republic of China: Rebuttal Comments to Limited Investigation Supplemental Questionnaire," dated August 29, 2014.

<sup>13</sup> See Submission from CAHP, "Multilayered Wood Flooring from the People's Republic of China," dated August 26, 2014.

<sup>14</sup> *Id.*

investigation, and that all parties would be given the same opportunity to submit case and rebuttal briefs in a “limited investigation.”<sup>15</sup> CAHP suggested joint waivers of the opportunity for parties to request extensions of the preliminary and final determinations, the opportunity for parties to request a hearing, and the opportunity of the parties to allege significant ministerial errors in the preliminary determination.<sup>16</sup> Finally, CAHP stated that each separate rate respondent should be allowed the option to accept the rate applied to it during the first administrative review in lieu of participating in the “limited investigation.”<sup>17</sup>

Fine Furniture responded to the Department’s questions by stating that there was no need to reopen the record and collect any additional information from Fine Furniture, but that, instead, the Department should assign Fine Furniture the same *de minimis* margin that it assigned the mandatory respondents.<sup>18</sup> Fine Furniture argued that the Department normally calculates the separate rate by weight-averaging the rates of the individually investigated companies.<sup>19</sup> It stated that when the individually investigated companies receive margins of zero or *de minimis*, or margins determined entirely by AFA, the Department may use any “reasonable method” to calculate the separate rate, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated, which Fine Furniture referred to as the expected method of calculating the separate rate.<sup>20</sup> Fine Furniture contended that the Department should use this expected method (*i.e.*, a weighted average of the margins assigned to the mandatory respondents) to calculate the separate rate assigned to Fine Furniture

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* As noted above, Fine Furniture, Armstrong, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature, and Karly Wood received rates during the first administrative review, but Changzhou Hawd did not.

<sup>18</sup> See submission from Fine Furniture, “Multilayered Wood Flooring from the People’s Republic of China: Comments on Questions in Department of Commerce’s August 19, 2014 Letter,” dated August 26, 2014.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, citing section 735(c)(5)(B) of the Act.

because (1) record evidence shows that Fine Furniture is similar to the mandatory respondents and dissimilar to the PRC-wide entity; (2) Fine Furniture was fully cooperative in the investigation and should not be assigned a partial AFA separate rate; and (3) the mandatory respondents are representative of the entire industry.<sup>21</sup> Fine Furniture argued that because it submitted voluntary questionnaire responses and its own self-calculated zero percent margin, the Department should conclude that it is reasonable to apply a separate rate based on the weighted-average margins of the mandatory respondents, and that the Department does not need to collect and analyze any further information.<sup>22</sup> However, although Fine Furniture first stated that the Department should assign it the weighted-average margin of the mandatory respondents, it also stated that the Department should use Fine Furniture's voluntary questionnaire responses to calculate a company-specific margin for Fine Furniture.<sup>23</sup> In either case, Fine Furniture argued that verification of its data is not warranted in this case because the company was already verified in the companion countervailing duty investigation and because the Department has recently stated that it is operating under resource constraints.<sup>24</sup>

Armstrong stated that the only permissible "limited investigation" would be for the Department to determine whether the margins individually calculated for the mandatory respondents are representative of the economic reality of the separate rate respondents.<sup>25</sup> Armstrong argued that the Act already presumes that the mandatory respondents are representative of the separate rate companies, and that this presumption should be in effect

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See submission from Armstrong, "Multilayered Wood Flooring from the People's Republic of China (4/1/10-9/30/10): Response of Armstrong Wood Products (Kunshan) Co., Ltd. to Limited Investigation Supplemental Questionnaire," dated August 26, 2014.

regardless of the margins assigned to the mandatory respondents.<sup>26</sup> Armstrong further stated that it has demonstrated its similarity to the mandatory respondents by cooperating with the Department's investigation and being assigned separate-rate status, and that it should be assigned a *de minimis* margin based on the expected method (*i.e.*, a weighted average of the margins assigned to the mandatory respondents).<sup>27</sup> Armstrong added that it was individually examined and verified as a mandatory respondent in the first administrative review, and that the Department could rely on Armstrong's information submitted in the first administrative review, in which Armstrong was assigned a zero percent margin, if the Department determined that it needed to collect additional information.<sup>28</sup>

Changzhou Hawd, Huilong, Jisen Wood, Dexin Wood, Yingyi-Nature, and Karly Wood stated that the Department should not attempt to collect any additional information from the separate rate companies because the record of the investigation contains sufficient information with which the Department can assign a margin to the separate rate respondents.<sup>29</sup> These companies argued that the Department should assign a *de minimis* margin to the separate rate companies based on its established policies and practice of selecting mandatory respondents that represent the non-selected respondents.<sup>30</sup> These companies added that after the Department refused to individually examine Fine Furniture in the original investigation due to its lack of sufficient resources, it would be inappropriate to request additional information from the separate

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* We note that while Armstrong was individually reviewed as a mandatory respondent in the first administrative review of Multilayered Wood Flooring from the PRC, its assertion that it underwent a full verification in that proceeding is factually incorrect. The Department did not conduct a verification of Armstrong in the first administrative review.

<sup>29</sup> See submission from Changzhou Hawd, Huilong, Jisen Wood, Dexin Wood, Yingyi-Nature, and Karly Wood, "Multilayered Wood Flooring from the People's Republic of China: Response to Limited Investigation Supplemental Questionnaire," dated August 26, 2014.

<sup>30</sup> *Id.*

rate respondents.<sup>31</sup> These companies argued that information from the separate rate respondents on the record of the investigation supports assigning the separate rate respondents the same margin as the mandatory respondents.<sup>32</sup> Specifically, they stated that the average unit values (“AUVs”) calculated from the separate rate respondents’ quantity and value (“Q&V”) questionnaire responses are in the same range of the AUVs of the three mandatory respondents, which indicates that the separate rate respondents deserve to be assigned the same *de minimis* margin as the mandatory respondents.<sup>33</sup>

Lumber Liquidators also argued that the Department should not collect any additional information from the separate rate respondents and should, instead, assign the separate rate respondents a *de minimis* margin based on the expected method of averaging the weighted-average margins for the individually examined mandatory respondents.<sup>34</sup> Lumber Liquidators argued that the Department should not waste its resources verifying any of the separate rate companies, and that there is sufficient evidence on the record to assign a margin to the separate rate respondents that is representative of the mandatory respondents’ experience.<sup>35</sup>

## B. Analysis

A “limited investigation” is not an existing type of examination explicitly provided for in either the Act or the Department’s regulations.<sup>36</sup> Rather, the Act and the Department’s regulations envision only a full investigation for individually examined companies and the assignment of an all-others rate for other eligible, non-examined companies.<sup>37</sup> The full

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See submission from Lumber Liquidators, “Remand Questions on Limited Individual Investigation,” dated August 26, 2014.

<sup>35</sup> *Id.*

<sup>36</sup> See sections 731-739 of the Act; see also 19 CFR 351.

<sup>37</sup> See section 735(c)(5) of the Act.



individual examination conducted by the Department includes collecting and analyzing initial and supplemental questionnaire responses, analyzing sales and factors of production (“FOP”) databases covering all sales of subject merchandise during the POI, and conducting on-site verification of all submitted data and information. This full individual examination of mandatory respondents allows the Department to fulfill its statutory obligations and protect the rights of all interested parties.

In non-market economy investigations, a company not selected for individual examination is permitted to submit a significantly reduced amount of information to establish eligibility for a separate rate, a rate which is inherently less specific to the separate rate company’s own experience than the rate the company would receive from a full individual examination. This decreased specificity in the assigned margin is commensurate with the decreased burden on the separate rate company, in that it is not required to submit full questionnaire responses or undergo verification. As a result, the record of the investigation underlying this litigation contains minimal information from the separate rate respondents. Changzhou Hawd, Armstrong, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature, and Karly Wood only submitted Q&V questionnaire responses and separate rate applications. The Department’s Q&V questionnaire requires companies to submit only their overall quantity of U.S. sales of subject merchandise made during the POI and the total value of those sales. The separate rate application requires companies to submit information concerning the absence of government control over their export activities. It requires submission of sales documentation, including U.S. Customs 7501 Entry Summary, bill of lading, commercial invoice, packing list, and documentation of receipt of payment, for a single sale during the POI. In addition to a Q&V questionnaire response and a separate rate application, Fine Furniture also submitted voluntary

responses to sections A, C, and D of the Department's antidumping duty questionnaire. However, Fine Furniture was not selected as an individually examined respondent in the investigation; therefore, its questionnaire responses were not analyzed, it was not required to respond to supplemental questionnaires, and its responses were not verified by Department officials.

Regarding Fine Furniture's arguments that the Department should use its questionnaire responses either to calculate a rate specific to Fine Furniture or as evidence that the *de minimis* margins assigned to the mandatory respondents should also be assigned to Fine Furniture, we disagree. Fine Furniture appears to suggest that we may simply use its voluntarily submitted responses "as is," along with its self-calculated margin. In reality, the Department normally issues multiple rounds of supplemental questionnaires after thoroughly analyzing a respondent's questionnaire responses. A respondent then normally submits multiple revisions of its databases in response to deficiencies identified by Department officials. For example, during the underlying investigation, the Department issued between four and six supplemental questionnaires to each mandatory respondent, and received between three and seven revisions of each mandatory respondent's sales and FOP databases, each correcting deficiencies identified through the course of the investigation. Although Fine Furniture may believe that it is deserving of a zero-percent margin based on its voluntarily submitted data, the mandatory respondents' multiple supplemental questionnaires and data revisions illustrate the necessity of conducting a thorough analysis of all data relied upon for calculating individual margins. Furthermore, the Department is statutorily required to verify the responses of individually examined respondents in an investigation.<sup>38</sup> Although Fine Furniture argues that verification of its responses is

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<sup>38</sup> See section 782(i)(1) of the Act ("The administering authority shall verify all information relied upon in making a

unnecessary because the company was verified in the companion countervailing duty investigation, we note that the Department relies upon, and verifies, different types of information in antidumping duty and countervailing duty investigations.<sup>39</sup> If we were to rely upon Fine Furniture’s questionnaire responses in this antidumping proceeding, we would also be required to conduct a verification of those responses.<sup>40</sup> As we previously explained in our second redetermination, significant Department resources would be required to fully analyze Fine Furniture’s questionnaire responses, issue supplemental questionnaires, and complete a verification of Fine Furniture’s sales and FOP data.<sup>41</sup>

Multiple separate rate respondents argued that the Department should calculate AUVs<sup>42</sup> from the separate rate respondents’ Q&V data and compare them with the mandatory respondents’ AUVs.<sup>43</sup> They argued that a comparison of these AUVs would support the conclusion that the AUVs of the mandatory respondents and separate rate respondents are comparable and would support assigning the separate rate respondents a zero or *de minimis* rate, like the mandatory respondents.<sup>44</sup> We find that simply comparing each separate rate

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final determination in an investigation”).

<sup>39</sup> For instance, both antidumping duty and countervailing duty verifications include verification of a company’s corporate structure, sales and accounting systems, and POI sales quantity and value reconciliation. However, items specific to an antidumping duty verification include verification of a company’s production data system, transaction-specific sales data, per-unit FOP calculations, FOP reconciliation, and separate-rate eligibility. Items specific to a countervailing duty verification include verification of programs alleged to be countervailable, such as loans and provisions of inputs for less than adequate remuneration.

<sup>40</sup> See section 782(i)(1) of the Act.

<sup>41</sup> In addition to the other problems identified, we also note that the approach proposed by Fine Furniture – that we base its separate rate margin on its voluntarily submitted questionnaire responses – would not be applicable to the other seven separate rate respondents.

<sup>42</sup> An AUV is a ratio calculated by dividing a respondent’s total value of sales by its total quantity of sales which provides a rough, estimated snapshot of a respondent’s pricing practices. See *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370 (Fed. Cir. 2013) (“*Bestpak*”).

<sup>43</sup> See submission from Fine Furniture, “Multilayered Wood Flooring from the People’s Republic of China: Comments on Questions in Department of Commerce’s August 19, 2014 Letter,” dated August 26, 2014; see also submission from Changzhou Hawd, Huilong, Jisen Wood, Dexin Wood, Yingyi-Nature, and Karly Wood, “Multilayered Wood Flooring from the People’s Republic of China: Response to Limited Investigation Supplemental Questionnaire,” dated August 26, 2014.

<sup>44</sup> *Id.*

respondents' AUV with the AUVs for the mandatory respondents would not be reasonable or meaningful because the subject merchandise is not homogeneous, and there is wide variation in pricing between different products.<sup>45</sup> Specifically, subject merchandise includes many different types of multi-layered wood flooring (including different face veneer wood species and thickness, core thickness and composition, the number of plies, and locking mechanisms), and a comparison of the mandatory respondents' gross unit prices shows significant price variation among products with different physical characteristics. We find that an AUV calculated from the separate rate respondents' Q&V data would be dependent on the exact mix of products each separate rate respondent sold, which would introduce distortion and unreliability into the AUV calculation. For example, one separate rate respondent might have made a large percentage of sales of a product with a more expensive wood type, more plies, and a thicker core and face veneer, while another might have made more sales of products with less expensive wood, fewer plies, and thinner core and veneer. The first respondent would have a higher calculated overall AUV than the second respondent, but the AUV would have no relation either to the mandatory respondents' AUVs or to the dumping behavior of the separate rate respondents. Thus, a comparison of the mandatory and separate rate respondents' Q&V data via AUVs would be an unreliable indicator of actual dumping behavior and would not result in margins based on the separate rate companies' own economic reality.

Furthermore, the U.S. Court of Appeals for the Federal Circuit ("CAFC") recently ruled that the Department could not rely exclusively on AUV comparisons to evaluate the

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<sup>45</sup> See Memoranda to the File, "Amended Final Determination Analysis Memorandum for Zhejiang Layo Wood Industry Co., Ltd." dated November 7, 2011, and accompanying Amended Final U.S. Sales Database for Layo Wood; "Final Determination Analysis Memorandum for the Samling Group," dated October 11, 2011, and accompanying Final U.S. Sales Databases for the Samling Group; "Final Determination Analysis Memorandum of Zhejiang Yuhua Timber Co., Ltd., dated October 11, 2011, and accompanying Final U.S. Sales Database for Yuhua.

reasonableness of an alternative method to determine separate rate companies' dumping margins. In *Bestpak*<sup>46</sup> the Department argued that a margin assigned to a separate rate company was reasonably reflective of its commercial reality because the AUV of the separate rate company was very close to the simple average AUVs of the mandatory respondents. However, the CAFC held that the Department's conclusion was not based on substantial evidence. The *Bestpak* Court found that, while the separate rate company's estimated AUV aligned with a simple average of the mandatory respondents' estimated AUVs, the Department's inference that their dumping margins paralleled that same correlation was speculative.<sup>47</sup> Similarly, in the present case, we determine that comparing each separate rate respondent's AUV to the AUVs for the mandatory respondents is not substantial evidence of whether the separate rate respondents are dumping.

Regarding multiple parties' arguments that the Department must base the separate rate margin on the weighted-average margins for the mandatory respondents as this is contemplated by the "expected method" in the statute, we disagree that this would comport with the "expected method." Further, we find that the statute provides that the Department may use "any reasonable method" to calculate the separate rate.<sup>48</sup> Several parties argued that the margins of the mandatory respondents are meant to be representative of the separate rate respondents, regardless of whether the mandatory respondents are assigned rates above or below *de minimis*. We note, however, that by providing both a general rule and an exception for determining the separate rate margin,<sup>49</sup> the statutory language envisions the possibility of alternative separate-rate calculation methods (*i.e.*, "any reasonable method") when the rates of the mandatory respondents are zero,

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<sup>46</sup> See *Bestpak*, 716 F.3d at 1380.

<sup>47</sup> *Id.* at 1379 ("While *Bestpak*'s estimated AUV aligned with a simple average of Jintian's and Yama's estimated AUVs, Commerce's inference that their dumping margins paralleled that same correlation is speculative.").

<sup>48</sup> See section 735(c)(5)(B) of the Act.

<sup>49</sup> See sections 735(c)(5)(A)-(B) of the Act.

*de minimis*, or determined entirely by AFA. Thus, while “any reasonable method” may include weight-averaging the margins of the mandatory respondents, the statute does not limit the separate rate calculation to this method alone. We find that the method put forth in our second redetermination constitutes a reasonable method for the reasons explained in the second redetermination analysis.<sup>50</sup>

Armstrong argued that the Department could rely on Armstrong’s complete and verified questionnaire responses in the first administrative review, in which Armstrong received a zero-percent rate. However, notwithstanding Armstrong’s claims, the Department did not conduct a verification of Armstrong in the first administrative review. Further, as noted in the Department’s second redetermination, the discipline of an antidumping duty order often results in lower or no margins in the first administrative review, as companies may change their pricing practices to eliminate the price discrimination found in the POI. Therefore, we disagree that we might use Armstrong’s zero-percent rate in the first administrative review as evidence that Armstrong, in fact, deserves a zero-percent rate in this redetermination of the investigation.

We appreciate that CAHP provided suggestions for how the Department might conduct a “limited investigation,” and that CAHP’s suggestions attempted to address the Department’s statutory and regulatory obligations. However, we find that CAHP’s proposal for a “limited investigation” did not differ in any meaningful way from a normal, full investigation. For instance, CAHP’s “limited investigation” included requiring each respondent to submit full responses to all sections of the Department’s questionnaire for the full POI.<sup>51</sup> Similarly, CAHP’s “limited investigation” allowed parties the opportunity to submit surrogate country comments,

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<sup>50</sup> See Second Redetermination.

<sup>51</sup> See Submission from CAHP, “Multilayered Wood Flooring from the People’s Republic of China,” dated August 26, 2014.

surrogate value factual information, case briefs, and rebuttal briefs.<sup>52</sup> We agree that full responses, comments, and briefs are vital components of an investigation. CAHP's proposed time frame is largely consistent with that in a normal, full investigation, with some exceptions. Regarding CAHP's suggestion that the Department limit the number of supplemental questionnaires it would issue to each respondent (allowing only one supplemental questionnaire), we find that this limitation would impede the Department's ability to collect all necessary information from each respondent, and could result in an increased use of facts available, including AFA, when the inability to issue additional supplemental questionnaires resulted in insufficient information on the record. Limiting the number of supplemental questionnaires issued to each separate rate respondent could also potentially contravene our statutory requirement to provide parties the opportunity to remedy or explain any deficiencies.<sup>53</sup> Additionally, we find that CAHP's offer to waive its ability to request an extension of the deadlines for the preliminary and final determinations would only hinder the Department's ability to meet its statutory obligations for all respondents simultaneously undergoing a nearly full investigation. Extensions of preliminary and final determinations are often necessary because of the complexities of the investigations and denying all extension requests at the onset of the limited investigation without regard to such complexities could raise a host of problems. Finally, we disagree with CAHP's suggestion that we might verify the responses of only two separate rate respondents. As stated above, we are required to conduct a verification of each individually examined company in an investigation,<sup>54</sup> so limiting the number of verifications would fail to satisfy our statutory obligations.

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<sup>52</sup> *Id.*

<sup>53</sup> *See* section 782(d) of the Act.

<sup>54</sup> *See* section 782(i)(1) of the Act.

In conclusion, we do not know of a reasonable method for conducting a “limited investigation” in this investigation that would meet the requirements of the Act and the Department’s regulations. When asked for their comments on how the Department might conduct a “limited investigation,” the separate rate respondents declined to propose any viable method. Although the Department has previously been instructed to determine a rate reflective of the separate rate respondents’ economic reality, the separate rate respondents themselves have consistently argued that they should simply be assigned the same *de minimis* rate as the mandatory respondents. The separate rate respondents elected not to offer any proposals for how the Department might conduct a “limited investigation” and determine a rate specific to the separate rate respondents’ economic reality, while meeting its statutory and regulatory obligations. As noted in the Department’s second redetermination, the CAFC has held that it can be presumed that a respondent will make a knowing and rational decision whether to respond to the Department’s questionnaires, based on which choice will result in the lower rate.<sup>55</sup> Thus, we might infer that the separate rate respondents made the knowing and rational decision to not contribute to the Department’s exploration of a “limited investigation” if an examination of the separate rate respondents’ sales and FOP data could yield an above-*de minimis* rate for those respondents. Furthermore, CAHP’s suggestions for a “limited investigation” do not significantly limit the bounds of the examination in a way that would make it practicable for the Department to conduct individual examinations of all eight separate rate respondents, especially considering the Department’s ongoing resource constraints.

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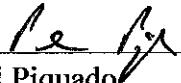
<sup>55</sup> See *Rhone Poulenc*, 899 F.2d at 1190-91; *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (“*Ta Chen*”); *KYD, Inc. v. United States*, 607 F.3d 760, 766-67 (Fed. Cir. 2010) (“*KYD*”); see also *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 752 F. Supp. 2d 1336, 1348 (Ct. Int’l Trade 2011) (“*Tianjin Mach.*”) (stating that *Rhone Poulenc* “stands for the proposition that a respondent can be assumed to make a rational decision to either respond or not respond to {the Department’s} questionnaires, based on which choice will result in a lower rate”).



We find that the best available method for determining the margins to be assigned to the separate rate respondents is the method explained in the Department's second remand redetermination for all the reasons discussed therein.<sup>56</sup>

**IV. FINAL RESULTS OF REDETERMINATION**

Following the Court's remand instructions, the Department considered whether a "limited investigation" of all eight separate rate respondents would be a viable alternative to the approach proposed in the Department's second remand redetermination. We have found no method of conducting such an investigation that would meet the Department's legal requirements in conducting an antidumping investigation; thus, we determine that a "limited investigation" is not a viable method of determining a margin for the separate rate respondents. Therefore, we respectfully request that the Court provide a ruling on the Department's previously submitted second remand redetermination.

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

14 OCTOBER 2014  
Date

<sup>56</sup> See generally Second Redetermination.