

Bosun Tools et al. v. United States
Consol. Court No. 18-00102, Slip Op. 19-125 (CIT September 23, 2019)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

Summary

The Department of Commerce (Commerce) prepared these final results of redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (the Court) issued on September 23, 2019, in *Bosun Tools et al. v. United States*, Consol. Court No. 18-00102, Slip Op. 19-125 (CIT 2019) (*Remand Order*). These final results of redetermination concern the final results of the antidumping duty administrative review of diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China), concerning the period of review (POR) November 1, 2015 through October 31, 2016.¹

In the *Remand Order*, the Court directed Commerce to place the business proprietary and public versions of Chengdu Huifeng New Material Technology Co., Ltd.'s (Chengdu Huifeng) second supplemental response on the record, consider the response for purposes of calculating Chengdu Huifeng's individual rate and, if there is a change to Chengdu Huifeng's rate, adjust the separate rate respondents' rates accordingly. We respectfully disagree with the Court's direction in the *Remand Order*. Therefore, under respectful protest,² and pursuant to the *Remand Order*, the business proprietary and public versions of Chengdu Huifeng's second supplemental response have been placed on the record. Moreover, since the time Chengdu Huifeng's second supplemental

¹ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 83 FR 17527 (April 20, 2018) and accompanying Issues and Decision Memorandum (Issues and Decision Memorandum) (collectively, *Final Results*).

² See *Viraj Group Ltd. v. United States*, 343 F.3d 1371, 1376-77 (Fed. Cir. 2003).

response was placed on the record, we issued two additional supplemental questionnaires in this remand proceeding, to which Chengdu Huifeng timely responded. For these final results of redetermination, we have considered Chengdu Huifeng's supplemental responses, calculated an individual rate for Chengdu Huifeng, and adjusted the relevant separate rate respondents' rates as discussed below.

Although Commerce did not solicit comments prior to issuance of the draft results of redetermination, the petitioner, the Diamond Sawblade Manufacturers' Coalition (DSMC), filed comments concerning Chengdu Huifeng's responses to Commerce's second, third and fourth supplemental questionnaires,³ and Chengdu Huifeng filed rebuttal comments to DSMC's comments concerning Commerce's third and fourth supplemental responses.⁴

We released our draft results of redetermination to interested parties on January 30, 2020 (Draft Remand), indicating that parties should submit comments in response to the Draft Remand with respect to issues they believed were relevant for the final results of redetermination. On February 13, 2020, we received comments from DSMC and Bosun Tools Co., Ltd. (Bosun Tools)⁵ and, on February 18, 2020, we received rebuttal comments from Chengdu Huifeng and the separate rate respondents that, like Bosun Tools, were Plaintiff-Intervenors in *Remand Order (Separate Rate Respondents)*.⁶

³ See DSMC's Letters: "Diamond Sawblades and Parts Thereof from the People's Republic of China: Comments on Chengdu's Second Supplemental Questionnaire Response," dated October 31, 2019; and "Diamond Sawblades and Parts Thereof from the People's Republic of China: DSMC's Comments on Chengdu's 3rd Supplemental Questionnaire Response," dated December 27, 2019.

⁴ See Chengdu Huifeng's Letters: "Diamond Sawblades and Parts Thereof from the People's Republic of China: 7th Review Remand, Court No. 18-00102, Slip Op. 19-125; and "Rebuttal to Petitioner's Comments on Chengdu Huifeng's 3rd Supplemental Response," dated January 6, 2020.

⁵ See DSMC's Letter, "Diamond Sawblades from the People's Republic of China: Comments on Draft Results of Remand Redetermination," dated February 13, 2020 (DSMC Draft Remand Comments), and Bosun Tools' Letter, "Diamond Sawblades from the People's Republic of China: Comment on Draft Remand Redetermination," dated February 13, 2020 (Bosun Tools Draft Remand Comments), respectively.

⁶ See Chengdu Huifeng's Letter, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Rebuttal Comments to the Draft Remand Results," dated February 18, 2020 (Chengdu Huifeng Draft Remand Rebuttal Comments), and the Separate Rate Respondents' Letter, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Rebuttal Comments to the Draft Remand Results," dated February 18, 2020 (Separate Rate

Discussion

I. Calculate Individual Margin Rate for Chengdu Huifeng

A. Background

In the *Preliminary Results*, Commerce determined that Chengdu Huifeng failed to cooperate by not acting to the best of its ability to comply with our requests for information by failing to provide requested information necessary to calculate a margin in a timely manner, and Commerce therefore determined Chengdu Huifeng's margin entirely based on facts otherwise available with an adverse inference (AFA).⁷ Commerce reached the same conclusion with respect to the other respondent selected for individual examination, the Jiangsu Fengtai Single Entity.⁸ Based on the guidance in section 735(c)(5)(B) of the Act, which we look to in calculating the rate for non-selected respondents in non-market economy (NME) antidumping administrative reviews, because all rates for the mandatory respondents were zero, *de minimis*, or based entirely on facts available, we preliminarily used the rate applied to the mandatory respondents as the rate for the non-selected companies eligible for a separate rate in this review, consistent with the Court of Appeals for the Federal Circuit's (CAFC) decision in *Albemarle Corp. v. United States*.⁹ Commerce's determinations to apply AFA to Chengdu Huifeng and the Jiangsu Fengtai Entity and to use the mandatory respondents' rates based entirely on facts available as the rate for the non-selected companies remained unchanged for the *Final Results*.¹⁰

Pursuant to the *Remand Order*, Commerce requested that Chengdu Huifeng resubmit its

Respondent Draft Remand Rebuttal Comments), respectively.

⁷ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016*, 82 Fed. Reg. 57585 (December 6, 2017) and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum) (collectively, *Preliminary Results*) at 8-13.

⁸ *Id.*

⁹ See Preliminary Decision Memorandum at 8, citing to *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle*).

¹⁰ See Issues and Decision Memorandum at Comments 1, 2 and 4.

response to Commerce’s second supplemental questionnaire, which it did.¹¹ After review of Chengdu Huifeng’s response to the second supplemental questionnaire, Commerce solicited additional information from Chengdu Huifeng in two additional supplemental questionnaires to which Chengdu Huifeng timely responded.¹² We considered these two responses in conjunction with all other information submitted on the record for purposes of calculating an individual rate for Chengdu Huifeng in the draft results of redetermination.

B. Analysis

For purposes of the draft results of redetermination, Commerce calculated an individual rate of 0.00 percent for Chengdu Huifeng using the information provided by Chengdu Huifeng in its responses to Commerce’s original questionnaire and supplemental questionnaires. For details on Commerce’s margin calculation for Chengdu Huifeng, *see* Memorandum, “Analysis Memorandum for Draft Results of Redetermination (Court No. 18-00102) Chengdu Huifeng New Material Technology Co., Ltd., for the Antidumping Duty Administrative Review of Diamond Sawblades and Parts Thereof from the People’s Republic of China; 2015-2016” dated concurrently with these draft results of redetermination (Chengdu Huifeng Draft Remand Analysis Memorandum), which contains Chengdu Huifeng’s business proprietary information, and “Surrogate Values for the Draft Results of Redetermination (Court No. 18-00102) concerning the Antidumping Duty Administrative Review of Diamond Sawblades and Parts Thereof from the People’s Republic of China; 2015-2016,” dated concurrently with these draft results of redetermination (Draft Remand Surrogate Value Memorandum), which is a public document.

¹¹ *See* Chengdu Huifeng’s Letter, “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Submission of Chengdu Huifeng’s 2nd Supplemental Response,” dated October 28, 2019, and attached second supplement response, “Diamond Sawblades and Parts Thereof from China: 7th Administrative Review: Second Supplemental Questionnaire Response,” dated September 25, 2017.

¹² *See* Chengdu Huifeng’s Letter, “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Submission of Chengdu Huifeng’s 3rd Supplemental Response,” dated December 11, 2019; *see also* Chengdu Huifeng’s Letter, “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Submission of Chengdu Huifeng’s 4th Supplemental Response,” dated January 22, 2020.

Post-Draft Remand Comments

Comment 1: Calculate Individual Margin Rate for Chengdu Huifeng

The petitioner argues that Commerce should indicate in the final results of redetermination that the final results are being reached under protest, because, consistent with the petitioner's position in the pre-remand litigation, Commerce lawfully and appropriately determined Chengdu Huifeng's margin on the basis of AFA. The petitioner further argues that, while it continues to believe that Chengdu Huifeng's original margin based on adverse inferences was lawful and appropriate, in light of the Court's directions, Commerce's draft recalculation of the separate rate margin for Chengdu Huifeng on remand is appropriate and should be continued for the final results of redetermination.

Chengdu Huifeng argues that, regardless of whether Commerce states in its Draft Remand or final results of redetermination that its determinations were made under protest, Commerce is required to follow the Court's instructions upon remand because the Court has exclusive jurisdiction to review Commerce's final determinations,¹³ and the standard of review is for the Court to determine whether Commerce's decisions are unsupported by substantial evidence or otherwise contrary to law.¹⁴ Moreover, Chengdu Huifeng notes that the petitioner's comments on the Draft Remand do not contest Commerce's margin-calculation methodologies. Finally, Chengdu Huifeng argues that it does not contest Commerce's margin-calculation methodologies and Commerce should continue to determine that Chengdu Huifeng's margin during the 2015-2016 administrative review was zero.

Bosun Tools and the other respondents not selected for individual examination in the underlying administrative review did not specifically comment on the accuracy of Commerce's

¹³ See Chengdu Huifeng Draft Remand Rebuttal Comments at 2 (citing 19 U.S.C. § 1675(a)).

¹⁴ See Chengdu Huifeng Draft Remand Rebuttal Comments at 2 (citing 19 U.S.C. § 1516a(b)(1)(B)).

margin-calculation methodology but did argue that the zero margin Commerce calculated for Chengdu Huifeng should be assigned to the separate rate respondents.¹⁵

Commerce's Position:

As we explained in the draft remand results, we respectfully disagree with the Court's direction in the *Remand Order* and are conducting this remand under respectful protest. Nevertheless, we have followed the Court's direction by accepting Chengdu Huifeng's information onto the record and calculating a margin based on that information. No parties argue that our Draft Remand failed to follow the directions of the Court, and we agree that we are required to follow the directions of the Court even when conducting a remand under protest. Accordingly, because the parties agree that Commerce acted consistently with the *Remand Order* by accepting Chengdu Huifeng's information and calculating a margin, and no parties contest the margin-calculation methodology, we continue to accept Chengdu Huifeng's information and calculate a zero margin for Chengdu Huifeng for these final results of redetermination.

II. Adjust Separate Rate Respondents' Rates

A. Background

In the *Preliminary Results*, unchanged in the *Final Results*, Commerce used the rate applied to the mandatory respondents as the rate for the non-selected companies in this review, because all rates for the mandatory respondents were zero, *de minimis*, or based entirely on facts available, pursuant to the guidance in section 735(c)(5)(B) of the Act and consistent with the CAFC's decision in *Albemarle*.¹⁶

¹⁵ The following companies, along with Bosun Tools, comprise the interested parties that participated in the underlying administrative review and were Plaintiff-Intervenors in the *Remand Order*: Danyang NYCL Tools Manufacturing Co., Ltd.; Danyang Weiwang Tools Manufacturing Co., Ltd.; Guilin Tebon Superhard Material Co., Ltd.; Hangzhou Deer King Industrial and Trading Co., Ltd.; Jiangsu Youhe Tool Manufacturer Co., Ltd.; Quanzhou Zhongzhi Diamond Tool Co., Ltd.; Rizhao Hein Saw Co., Ltd.; and Zhejiang Wanli Tools Group Co., Ltd. (collectively, Separate Rate Respondents).

¹⁶ *See Albemarle*.

B. Analysis

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual separate rate respondents not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for separate rate respondents which were not individually examined in an administrative review. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate in a market economy investigation shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually examined, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Moreover, section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis*, or determined entirely under section 776 of the Act, we may use "any reasonable method" for assigning the rate to all other respondents not individually examined, "including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act explains that the "expected method" under section 735(c)(5)(B) of the Act "will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available."¹⁷ In the *Final Results*, we determined the margin for the other mandatory respondent, the Jiangsu Fengtai Single Entity, based entirely on section 776 of the Act. Our margin determination for the Jiangsu Fengtai Single Entity is not subject to the litigation that gave rise to this remand proceeding.¹⁸ Therefore, for the Draft

¹⁷ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 883 (SAA).

¹⁸ See Preliminary Decision Memorandum at 11-13; and Issues and Decision Memorandum at Comment 2.

Remand, given that Chengdu Huifeng’s rate is zero and the Jiangsu Fengtai Single Entity’s AFA rate is 82.05 percent,¹⁹ we assigned a simple average of the two rates to the non-selected respondents eligible for a separate rate that are party to this litigation, consistent with the guidance in section 735(c)(5)(B) of the Act and our practice in NME cases.²⁰ Specifically, we assigned the rate of 41.025 percent to the following non-selected respondents eligible for a separate rate:²¹

Bosun Tools Co., Ltd.

Danyang Huachang Diamond Tools Manufacturing Co., Ltd.

Danyang NYCL Tools Manufacturing Co., Ltd.

Danyang Weiwang Tools Manufacturing Co., Ltd.

Guilin Tebon Superhard Material Co., Ltd.

Hangzhou Deer King Industrial and Trading Co., Ltd.

Jiangsu Youhe Tool Manufacturer Co., Ltd.

Quanzhou Zhongzhi Diamond Tool Co., Ltd.

Rizhao Hein Saw Co., Ltd.

Zhejiang Wanli Tools Group Co., Ltd.

Post-Draft Remand Comments

Comment 2: Whether to Assign the Calculated *De Minimis* Rate or an Average of *De Minimis* and AFA Rates to Separate Rate Respondents

The petitioner argues that Commerce’s draft recalculation of the separate rate margin is appropriate, as it conforms with both Commerce’s pre-remand methodology, as well as with prior Commerce and judicial precedent regarding situations in which one respondent receives a *de*

¹⁹ See *Preliminary Results*, unchanged in *Final Results*.

²⁰ See *Albemarle*; see also *Xanthan Gum from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 82 FR 11428 (February 23, 2017) (*Xanthan Gum*) and accompanying Issues and Decision Memorandum at Comment 4.

²¹ See *Albemarle*.

minimis margin while the other receives a margin based on adverse inferences²² and, therefore, should be continued for the final results.

Bosun Tools argues that Commerce’s calculated separate rate based on a simple average of the *de minimis* and AFA rates of the mandatory respondents is contrary to the mandate found in section 735(c)(5) of the Act and the guidance found in the SAA interpreting the U.S. antidumping law and, therefore, Commerce should have instead assigned the separate rate companies the cooperating mandatory respondent’s *de minimis* margin. Bosun Tools argues that the statute and the SAA are written to address investigations, where Commerce does not have the benefit of information about the history of dumping for that particular product or information to suggest that a margin based on AFA is not also indicative of the dumping of the other non-investigated companies and, therefore, do not specifically address the unique situation of non-market economy (NME) administrative reviews. Bosun Tools argues that the SAA specifically directs Commerce that the “expected method” of determining a separate rate is not appropriate if the rate assigned is not reflective of potential dumping margins. Bosun Tools argues that the CAFC better informs the interpretation of this statutory provision to separate rate companies in non-market economy countries in *Bestpak*,²³ rather than in *Albemarle* which Commerce relied upon as a “reasonable method” in the draft results. Bosun Tools explains that the CAFC found in *Bestpak* that it was unreasonable for Commerce to assign to a cooperative respondent a rate that was based on the China-wide rate when the separate rate respondent had fully cooperated and proven its independence from the Chinese government in that Commerce failed to provide any credible evidence that the rate assigned was reasonably reflective of the commercial reality of the separate

²² See DSMC Draft Remand Comments at 3 (citing the Draft Remand at 4-6 where Commerce cites to *Albemarle* and *Xanthan Gum*).

²³ See Bosun Tools Draft Remand Comments at 5 (citing *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370 (Fed. Cir. 2013) (*Bestpak*)).

rate respondents.²⁴ Bosun Tools further argues that, while *Albemarle* is a more recent decision, it did not invalidate the decision in *Bestpak*. In fact, Bosun Tools explains, similar to *Bestpak*, the CAFC found in *Albemarle* a fundamental problem with assigning AFA or non-contemporaneous margins to cooperating separate rate companies. Moreover, Bosun Tools argues that, because the facts in *Bestpak* where Commerce assigned the separate rate companies a simple average of *de minimis* and AFA rates more closely resemble the facts of the instant case, Commerce must address the CAFC's finding in *Bestpak* in addition to the CAFC's finding in *Albemarle* in which the CAFC criticized Commerce for not following the Congressional intent to use the expected method when the record did not contain any information to suggest the *de minimis* margins would not be reasonably reflective of potential dumping margins.²⁵ Thus, Bosun Tools argues that Commerce improperly followed the expected method because it is not reasonably reflective of the potential dumping margins of separate rate companies in this review, namely because one of the mandatory respondents received a total AFA margin and, unlike *Albemarle* where the *de minimis* rate was based on the mandatory respondents' contemporaneous pricing data, in the instant case the AFA rate is not based on the mandatory respondents' pricing data but rather based on adverse information from a segment seven years previous to this one with respect to a state-controlled mandatory respondent. Moreover, Bosun Tools argues that there is a history of low calculated dumping margins in the antidumping duty order, particularly with respect to Bosun Tools,²⁶ there

²⁴ See Bosun Tools Draft Remand Comments at 5 (citing *Bestpak*, 716 F.3d at 1379).

²⁵ See Bosun Tools Draft Remand Comments at 5 (citing *Albemarle*, 821 F.3d 1345, 1357; and *Changzhou Hawd Flooring Co. v. United States*, 848 F.3d 1006, 1012 (Fed. Cir. 2017) (*Hawd*) (interpreting *Albemarle*)).

²⁶ See Bosun Tools Draft Remand Comments at 7 (citing *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013); *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36166 (June 17, 2013); *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014); *Diamond Sawblades and Parts Thereof From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015); and *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26912 (June 12, 2017), in which Bosun Tools was assigned rates ranging from 1.51% to 9.55% and

was no calculated margin in the review subsequent to the instant review²⁷ and, in the most recently completed preliminary results of review, a 0.00 percent margin was calculated for the sole mandatory respondent and assigned to the separate rate respondents, including Bosun Tools.²⁸ Furthermore, Bosun Tools argues that *Albemarle* specifically contemplated two circumstances when it would be reasonable not to rely upon the expected method – one where there is evidence that the overall market and the dumping margins have not changed from period to period, which Bosun Tools argues is demonstrated by the calculated margins in recent other cases, and the other where the rate is based on AFA, where “applying an adverse rate to cooperating respondents undercuts the cooperation-promoting goal of the AFA statute.”²⁹ Bosun Tools argues that the separate rate respondents in the instant review fully cooperated and, as the CAFC found in *Hawd*, where Commerce had included an AFA rate rather than using an average only of the mandatory respondents’ *de minimis* margins in the separate rate, it is unlawful to infer any adverse inference from non-cooperating companies to cooperating separate rate companies. In addition, Bosun Tools argues that the 82.05% AFA rate is not contemporaneous with the instant review and bears no relation to the respondent’s own data and dumping margins, because it is based upon a different and now economically non-comparable country’s surrogate values. Bosun Tools argues that, in *Albemarle*, the CAFC criticized Commerce for ignoring, without reason, the calculated rate of the cooperating mandatory respondents in favor of older data to apply to the cooperating separate rate

the separate rate respondents were assigned rates ranging from 2.34% to 9.55%).

²⁷ See Bosun Tools Draft Remand Comments 7-8 (citing *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 64331 (December 14, 2018)).

²⁸ See Bosun Tools Draft Remand Comments 8 (citing *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 85 FR 2705 (January 16, 2020)).

²⁹ See Bosun Tools Draft Remand Comments at 9 (citing *Albemarle* 821 F.3d 1345, 1357, quoting *KYD, Inc. v. United States*, 607 F.3d 760, 766 (Fed. Cir. 2010); and *Changzhou Wujin Fine Chem. Factory Co., Ltd. v. United States*, 701 F.3d 1367, 1378 (Fed. Cir. 2012)).

companies.³⁰ Bosun Tools argues that, because Commerce has in the instant review contemporaneous information based on the sales and cost records of a cooperating respondent, Commerce can apply to the cooperating separate companies the calculated zero rate in this review.

The Separate Rate Respondents argue that the separate rate company rate Commerce calculated in the Draft Remand is both contrary to law and not supported by substantial evidence and, therefore, for purposes of the final results of redetermination, Commerce should apply a zero margin to the separate rate respondents as each separate rate company in the underlying administrative review was fully cooperative and should not be subject to a margin that includes a total AFA margin. The Separate Rate Respondents explain that Commerce normally calculates the separate company rate in NME cases by averaging the margins of the mandatory respondents, while excluding zero and *de minimis* margins and margins based on total AFA³¹ and, in situations where all mandatory respondents were subject to either total AFA or zero or *de minimis* margins, such as in the instant case, the statute directs Commerce to use “any reasonable method” to calculate the separate company rate.³² The Separate Rate Respondents argue that, while the statute further instructs Commerce in such situations to use the “expected method” of averaging the zero, *de minimis* and AFA margins of the mandatory respondents, the SAA expressly provides that the expected method should not be used if it is “not feasible or it would not be reasonably reflective of potential antidumping duty margins.”³³ Thus, the Separate Rate Respondents argue that Commerce improperly used the expected method in the instant review when it assigned an average of the 82.05 percent AFA rate and Chengdu Huifeng’s zero rate to the separate rate respondents because it did not directly address the SAA and explain why Commerce did not

³⁰ See Bosun Tools Draft Remand Comments at 10 (citing *Albemarle* 821 F.3d 1345, 1356).

³¹ See Separate Rate Respondent Draft Remand Rebuttal Comments at 2 (citing 19 U.S.C. § 1673d(c)(5)(A)).

³² See Separate Rate Respondent Draft Remand Rebuttal Comments at 3 (citing 19 U.S.C. § 1673d(c)(5)(B)).

³³ See Separate Rate Respondent Draft Remand Rebuttal Comments at 3 (citing SAA, H.R. Doc. No. 103-316, Vol. 1 at 873).

deviate from the expected method. The Separate Rate Respondents argue that the statute does not grant Commerce absolute and unbounded discretion in selecting a reasonable method under section 735(c)(5)(B) of the Act to establish the all-others rate and Commerce is obligated to employ methodologies to establish margins as accurately as possible,³⁴ and that “any reasonable method” must be to calculate “a margin that is reasonably reflective of potential dumping margins for non-investigated exporters or producers”³⁵ and is supported by record evidence. The Separate Rate Respondents argue that, just because the statute authorizes an expected methodology, that does not require that the method be applied in all circumstances,³⁶ and “it is possible for the application of a particular methodology to be unreasonable in a given case.”³⁷ The Separate Rate Respondents argue that this is particularly true when the statute and its legislative history expressly provide for the use of other reasonable methodologies in situations where the expected method does not reasonably reflect the potential margins of the separate rate companies. The Separate Rate Respondents further argue that the CAFC reversed Commerce’s application of the expected methodology in calculating the separate company rate when Commerce, as in this case, averaged the *de minimis* and the AFA margins of the two mandatory respondents, consistent with the SAA, because the resulting margin did not “bear some relationship to their actual antidumping margins.”³⁸ The Separate Rate Respondents argue that, because in this case the separate rate respondents were fully cooperative in the underlying administrative review and were assigned a separate company rate distinct from the total AFA/China-wide rate, and Chengdu Huifeng was the only cooperative mandatory respondent, Chengdu Huifeng’s zero margin was most reflective and

³⁴ See Separate Rate Respondent Draft Remand Rebuttal Comments at 3-4 (citing *Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001)).

³⁵ See Separate Rate Respondent Draft Remand Rebuttal Comments at 4 (citing *Baroque Timber Industries (Zhongshan) Co., Ltd. v. United States*, 971 F. Supp. 2d 1333, 1342 (CIT 2014)).

³⁶ See Separate Rate Respondent Draft Remand Rebuttal Comments at 4 (citing *Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3d 1077, 1084-1085 (Fed. Cir. 2001) (*Thai Pineapple*)).

³⁷ See Separate Rate Respondent Draft Remand Rebuttal Comments at 4 (citing *Bestpak* at 1378 (citing to *Thai Pineapple* at 1085)).

³⁸ See Separate Rate Respondent Draft Remand Rebuttal Comments at 4 (citing *Bestpak* at 1380).

representative of the dumping margins of the cooperative separate rate companies. In contrast, the Separate Rate Respondents argue, an average of the two mandatory respondents, which includes the total AFA margin of the uncooperative mandatory respondent, is completely unrepresentative and was not reflective of the margins of fully cooperative separate rate respondents.³⁹

Commerce’s Position:

We continue to find that applying the average of the zero percent margin calculated for Chengdu Huifeng and the 82.05 percent rate applied to the Jiangsu Fengtai Single Entity is consistent with the guidance in section 735(c)(5)(B) of the Act and our practice.

Bosun attempts to draw a distinction between the application of section 735(c)(5)(B) of the Act in investigations versus administrative reviews. Bosun states that in investigations Commerce does not necessarily have information to suggest that a dumping margin based on AFA is not indicative of the dumping of non-investigated companies, whereas Commerce does have the benefit of historic information in a review. We find Bosun’s arguments unpersuasive. In *Albemarle*, the CAFC specifically addressed the reliance on historical data in the context of determining the separate rate in administrative reviews. In that case, Commerce did have the benefit of information from prior reviews, but the CAFC explained that “{t}here is no basis to simply assume that the underlying facts or calculated dumping margins remain the same from period to period. ‘{I}f the facts remained the same from period to period, there would be no need for administrative reviews.’”⁴⁰ And even if that were not the case, Bosun points to no record evidence to demonstrate that its behavior, or the behavior of any of the separate rate companies, is similar in this review to its behavior in prior or subsequent reviews. Moreover, there is no

³⁹ See Separate Rate Respondent Draft Remand Rebuttal Comments at 5 (citing *Hawd* at 1012).

⁴⁰ *Albemarle*, 821 F.3d at 1356 (citing *Shandong Huarong Mach. Co. v. United States*, 29 C.I.T. 484, 490-91 (2005)).

evidence on the record of this review that the separate rate applied to Bosun and the separate rate companies is not reasonably reflective of their potential dumping margins. Bosun points to its calculated rates in other reviews under this Order as evidence of low margins, but consistent with *Albemarle* we find it would be inappropriate to rely on such non-contemporaneous rates. The separate rate companies similarly argue that applying the average of the zero and AFA margins to them is impermissible because the resulting margins are unreasonable and do not reflect the dumping margins of the separate rate respondents. The separate rate companies also fail to identify any record evidence suggesting that the separate rate does not reasonably reflect their potential dumping margins. Accordingly, we find it would be inappropriate to depart from the expected method.

Bosun asserts that, although Commerce relies on *Albemarle*, the facts of this case more closely resemble the facts in *Bestpak*. Bosun asserts that, in *Bestpak*, the CAFC “found that it was unreasonable to assign a cooperative respondent a rate that was based on the {China}-wide rate when the separate rate respondent had fully cooperated and proven its independence from the Chinese government.”⁴¹ We disagree that *Bestpak* does not support our use of an AFA margin in determining the separate rate. *Bestpak* affirmed that Commerce’s methodology could include averaging *de minimis* and AFA rates. Specifically, *Bestpak* states that “{section 735(c)(5)(B) of the Act} and the SAA explicitly allow Commerce to factor both *de minimis* and AFA rates into the calculation methodology.”⁴² Although *Bestpak* ultimately found the rate applied in that case unreasonable, it was not because of the use of an AFA rate in the average to determine the separate rate. *Bestpak* states, “{a}lthough Commerce may be permitted to use a simple average methodology to calculate the separate rate, the circumstances of this case renders a simple average

⁴¹ Bosun Tools Draft Remand Comments at 5.

⁴² *Bestpak*, 716 F.3d at 1378.

of a *de minimis* and AFA China-wide rate unreasonable *as applied*. Similarly, a review of the administrative record reveals a lack of substantial evidence showing that such a determination reflects economic reality.”⁴³ We find that the case here does not present a situation where our calculation methodology is unreasonable as applied. Although Bosun emphasizes that *Albemarle* did not overrule *Bestpak*, despite being more recent, Bosun fails to recognize that *Bestpak* relies on the reasoning of *Gallant Ocean*.⁴⁴ The *Gallant Ocean* framework that required Commerce to consider “commercial reality” was specifically superseded by statute.⁴⁵ Moreover, the CAFC in *Bestpak* emphasized that “{t}he 123.83% rate assigned to Bestpak is far in excess of the *de minimis* rate assigned to {the mandatory respondent},” and that the rate applied to Bestpak “more than doubles the import’s sales price.”⁴⁶ Therefore, *Bestpak* was focused on the specific rate applied in that case, which was nearly three times higher than the rate applied to Bosun and the separate rate companies here.

Finally, even after *Bestpak*, the Court has sustained Commerce’s methodology of averaging *de minimis* and AFA rates. In *Solianus*, the Court sustained Commerce’s decision to take the simple average of the mandatory respondents’ rates, which included two AFA rates and one *de minimis* rate, to determine the all others rate.⁴⁷ That decision also explains why Bosun’s reliance on *Hawd* is misplaced. Bosun argues that “*Changzhou Hawd* specifically found it unlawful to infer any adverse inference from non-cooperating companies to cooperating separate rate companies.”⁴⁸ As already explained, the CAFC specifically affirmed Commerce’s methodology of taking an average of the mandatory respondents’ rates to determine the separate rate, even when

⁴³ *Id.* (emphasis added).

⁴⁴ *See id.* at 1379 (citing *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319, 1325 (Fed. Cir. 2010)).

⁴⁵ *See* Section 776(d)(3)(B) of the Act.

⁴⁶ *See Bestpak*, 716 F.3d at 1379.

⁴⁷ *See Solianus, Inc. v. United States*, 391 F. Supp. 3d 1331 (CIT 2019) (*Solianus*).

⁴⁸ *See* Bosun Tools Draft Remand Comments at 9.

those rates include AFA rates.⁴⁹ In *Hawd*, Commerce averaged the *de minimis* rates of the mandatory respondents with the China-wide entity rate, which was determined based on AFA.⁵⁰ As the Court explained when distinguishing *Hawd* in *Solianus*, “the AFA rate that was averaged together with the three individually investigated respondent rates was the distinct China-wide entity rate assigned to all entities that had not shown their independence from the Chinese government. The China-wide AFA rate was not derived from a mandatory respondent”⁵¹ The Court explained that the distinction is important “because to factor in a rate not derived from a mandatory respondent would defeat the presumption that ‘mandatory respondents . . . are assumed to be representative’ of all exporters, especially those ‘separate’ entities that demonstrated their independence from the Chinese government.”⁵² Here, as in *Solianus*, the AFA rate that was averaged with the zero rate was applied to a mandatory respondent.

Finally, Bosun argues that the 82.05 percent AFA rate is not contemporaneous with this review. We disagree. Regardless of when the AFA rate was first applied, its application to the individually examined respondent in this review makes it a contemporaneously applied rate. As explained above, the CAFC has specifically affirmed Commerce’s methodology of averaging *de minimis* and AFA rates to determine the separate rate. Section 776(b)(2) of the Act provides that an adverse inference may include reliance on information derived from: the petition; a final determination in the investigation; any previous review; or any other information placed on the record. Accordingly, the Act specifically contemplates that an AFA rate can be based on non-contemporaneous information. Considering that the Act also provides that a reasonable method to determine the all-others rate when all individually investigated companies’ dumping margins are zero, *de minimis*, or based on AFA is to average the dumping margins for the

⁴⁹ See *Bestpak*, 716 F.3d at 1378.

⁵⁰ See *Hawd*, 848 F.3d at 1009.

⁵¹ See *Solianus*, 391 F. Supp. 3d at 1340.

⁵² *Id.*

individually investigated companies,⁵³ we find that the Act permits the use of an AFA rate in determining the separate rate even if the AFA rate is derived from a prior review. Because the AFA rate was a contemporaneously applied rate, we continue to find that averaging that rate with Chengdu Huifeng's zero rate is consistent with the reasonable method for determining a separate rate provided by section 735(c)(5)(B) of the Act.

Final Results of Redetermination Pursuant to the *Remand Order*

In accordance with the *Remand Order*, Commerce has considered Chengdu Huifeng's second supplemental response, as well as Chengdu Huifeng's responses to two additional supplement questionnaires issued by Commerce, for purposes of calculating an individual rate for Chengdu Huifeng. Based on its analysis, Commerce: (1) calculated an individual rate for Chengdu Huifeng and (2) assigned Chengdu Huifeng's calculated rate to the separate rate respondents' rates. The weighted-average dumping margin for Chengdu Huifeng for the POR, November 1, 2015 through October 31, 2016, for diamond sawblades and parts thereof from the People's Republic of China resulting from Commerce's calculations pursuant to this remand, is 0.00 percent.⁵⁴

3/9/2020

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁵³ See section 735(c)(5)(B) of the Act.

⁵⁴ See Chengdu Huifeng Draft Remand Analysis Memorandum and Draft Remand Surrogate Value Memorandum.