A-570-970
Remand Redetermination
POI: 4/01/10 – 9/30/10
Public Document
E&C/IV: BF/EK

Baroque Timber Industries (Zhongshan) Company, Limited, *et al.* v. United States
Consol. Court No. 12-00007, Slip Op. 14-35 (March 31, 2014)
FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT ORDER

I. SUMMARY

The U.S. Department of Commerce (the "Department") prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade ("the CIT") in *Baroque Timber II*.[1] This litigation pertains to certain issues in the investigation of multilayered wood flooring ("MLWF") from the People's Republic of China ("PRC").[2] 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 plaintiffs in this action include the separate rate respondents Fine Furniture (Shanghai) Limited ("Fine Furniture"); Changzhou Hawd Flooring Co. ("Changzhou Hawd"), Ltd.; Dunhua City Jisen Wood Industry Co., Ltd. ("Jisen 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"); Armstrong Wood Products

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[1] *See Baroque Timber Industries (Zhongshan) Company, Limited, et al. v. United States*, Consol. Court No. 12-00007, Slip Op. 14-35 (March 31, 2014) ("*Baroque Timber II*").
[2] *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*").

(Kunshan) Co., Ltd. ("Armstrong"); and Karly Wood Product Limited ("Karly Wood") (hereafter "separate rate respondents" or "separate rate plaintiffs").

The CIT remanded to the Department the 6.41 percent rate assigned to the separate rate respondents. The CIT stated that this 6.41 percent rate was not reasonable because the Department had not articulated a rational connection between the record evidence and the 6.41 percent rate applied to the separate rate respondents, nor has the Department explained how its determination bears a relationship to the "economic reality"[3] of the litigating separate rate respondents. The CIT held that while the simple-average methodology was not *per se* unreasonable, it was not supported by substantial evidence, stating that the Department did not consider whether the use of an adverse facts available ("AFA") rate was merited in its separate rates calculation[4] and that the Department did not connect the transaction-specific margin of 25.62 percent and the separate rate respondents' pricing practices.[5]

Also, the CIT disagreed with the Department's interpretation of *Bestpak*[6] and found that *Bestpak* required the separate rate to "bear some relationship to respondents' economic reality and factual situation."[7]

II. REMANDED ISSUE

Margin Calculated/Assigned for the Separate Rate Respondents

A. Background

In the first remand,[8] the Department assigned the separate rate respondents a 6.41 percent rate, which was derived from a simple average of the 25.62 percent PRC-wide entity and the zero

[3] *See Baroque Timber II* at 25.
[4] *Id.* at 19.
[5] *Id.* at 21.
[6] *See Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370, 1380 (Fed. Cir. 2013) ("*Bestpak*").
[7] *See Baroque Timber Remand II* at 25.
[8] *See* Final Result of Redetermination Pursuant to Court Order, dated November 14, 2013.

percent weighted-average calculated rates for each of the three mandatory respondents (Layo Wood, Samling, and Yuhua), pursuant to section 735(c)(5)(B) of the Tariff Act of 1930, as amended (the "Act"). However, the CIT determined that while the simple average methodology was not *per se* unreasonable, the 6.41 percent rate assigned to the separate rate respondents was not supported by substantial evidence.

B. Analysis

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 AFA}." However, when, as in this investigation, the dumping margins established for all individually investigated respondents are zero, *de minimis*, or based entirely on AFA, 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 plaintiffs' separate rate, the Department first reexamined the dumping margins of the exporters/producers that were individually investigated (*i.e.*, Samling, Layo Wood, and Yuhua). In this investigation, the mandatory respondents provided satisfactory and timely information in response to the Department's requests for information and cooperated by acting to the best of their ability to comply with these requests. Based on the information provided, the Department calculated a zero percent margin for Yuhua in the *Final Determination*, and zero percent margins for Layo

Wood and Samling in the first remand redetermination. Conversely, 110 companies did not respond to the Department's quantity and value questionnaire.[9] Therefore, the Department determined that there were exporters/producers of the subject merchandise during the period of investigation that did not respond to the Department's request for information.[10] For this reason, the Department determined that these 110 companies withheld information that was requested, significantly impeded the proceeding, and denied the Department the opportunity to choose these companies as mandatory respondents, ask supplemental questions, or conduct verification of responses.[11]

By refusing to respond to the Department's quantity and value questionnaire, the 110 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. It is, nevertheless, reasonable to infer that these companies' dumping margins during the period of investigation 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.[12] The Department reasonably infers that an uncooperative respondent would have cooperated if it could have obtained such a low rate.[13]

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[9] *See Multilayered Wood Flooring from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 76 FR 30656 (May 26, 2011) ("*Preliminary Determination*").
[10] *See Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (Oct. 18, 2011) ("*Final Determination*").
[11] *Id.*
[12] *See Baroque Timber II* at 20 (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...").
[13] *See Changzhou Wujin Fine Chemical Factory Co., Ltd. v. United States*, Slip Op. 13-127 (Ct. Int'l Trade Oct. 2, 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 (Ct. Int'l Trade 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).

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 Department's questionnaires, based on which choice will result in the lower rate.[14] In this investigation, it is clear from the information on the record that these companies refused to participate when they did not respond to our quantity and value questionnaires.[15] Accordingly, the Department can infer that these 110 companies made knowing and rational decisions that they were not capable of obtaining a lower rate (*i.e.*, a zero or *de minimis* rate). Therefore, it is reasonable to conclude from the record evidence that these companies' actual dumping margins during the period of investigation were not zero or *de minimis* and, had they chosen to participate, the Department would have had the opportunity to choose one as a mandatory respondent and would have calculated a dumping margin above *de minimis* in the *Final Determination*.[16]

Based on the above reexamination of the dumping margins of the exporters/producers under investigation, the Department selected a reasonable method to establish the separate rate plaintiffs' separate rate. As indicated above, the Department determines that it may infer that the actual dumping margins of the individually investigated respondents would not have been all

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[14] *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 Tianiin 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"); *Mueller Comercial de Mexico. S. de R.L. de C.V. v. United States*, 807 F. Supp. 2d 1361, 1367 (Ct. Int'l Trade 2011) (stating that the proposition expressed in *Rhone Poulenc* "that an uncooperative respondent receives the highest rate by choice, based on an understanding of its position, is carried forward in {KYD}").

[15] *See Preliminary Determination* at 30662 (where the Department stated that certain companies did not respond to our questionnaire requesting Q&V information).

[16] *See Changzhou Wujin Fine Chemical Factory Co., Ltd.,* Slip Op. 13-127 at 11 (affirming the Department's finding that the separate rate companies had above *de minimis* rates without assigning an exact antidumping duty rate).

zero, *de minimis*, or based entirely on AFA, if the 110 companies had cooperated.[17] Therefore, the Department determined that a reasonable method of establishing the separate rate plaintiffs' separate rate for the period of investigation is to apply the separate rate calculation methodology preferred in the statute, as provided in section 735(c)(5)(A) of the Act. As noted above, this provision directs the Department to establish a separate rate of "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 AFA}." Pursuant to section 735(c)(5)(A) of the Act, when only one dumping margin for the individually investigated respondents is above *de minimis* and not based on AFA, the separate rate will be equal to that single above *de minimis* rate.[18] Accordingly, if the 110 companies had chosen to cooperate, the examined company's rate would have been above *de minimis* rate and would have been assigned to the separate rate plaintiffs as a separate rate in the *Final Determination*. Therefore, the Department determined that it is reasonable to conclude that the separate rate plaintiffs' separate rate for the period of investigation was above *de minimis*.[19]

This approach excludes any inferences based on AFA, but rather is based on a reasonable inference that the 110 companies' lack of cooperation indicates that they would have been assigned antidumping duties higher than *de minimis*.[20]

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[17] *See Baroque Timber II* at 20 (stating "Commerce may draw reasonable inferences from the failure of uncooperative respondents to provide evidence of the size, quantity, and value of their sales").
[18] *See Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (Ct. Int'l Trade 2008) (affirming the Department's determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).
[19] *See, e.g., Changzhou Wujin Fine Chemical Factory Co., Ltd.*, Slip Op. 13-127 at 11.
[20] *Id.* at 8.

Furthermore, in the first administrative review of this antidumping duty order, the Department individually investigated four companies, including two of the separate rate plaintiffs.[21] While 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 period of investigation ("POI"), in this case the Department preliminarily found continued dumping in the first review results.[22]

Therefore, the Department reasonably infers that it would have found dumping during the period of investigation, prior to the imposition of the antidumping duty order. This confirms that our treatment of the plaintiffs bears a relationship to their economic reality. This complies with the Court's opinion by tying the plaintiffs' economic reality and factual situation to the results of this remand redetermination.[23]

While it is normally necessary to assign a specific rate to separate rate respondents, the Department determined that, in this instance, it would be an unnecessary use of administrative and judicial resources to proceed with the additional resource-intensive investigation and calculations needed to further specify seven out of eight companies' separate rates. Indeed, the rate determined in the first administrative review supersedes the cash deposit rate established in the final determination of the investigation.[24] Also, any rates resulting from this litigation would not be used for liquidation purposes for seven of the separate rate plaintiffs.[25] Rather, these seven separate rate plaintiffs' liquidation rates will be based on the assessment rates determined

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[21] *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 78 FR 70267 (Nov. 25, 2013).
[22] *Id.* Fine Furniture, Layo Wood, and Armstrong all had rates above *de minimis* in the Preliminary Results: 0.67, 8.87, and 8.85 respectively. Subsequently, Layo Wood has been excluded from the antidumping duty order because of the results of the first remand redetermination in this case. *See* Dkt. No. 32, Case No. 12-00013.
[23] *See Baroque Timber II* at 4.
[24] *See* section 751(a)(2)(C) of the Act.
[25] *Id.*

from the first administrative review or a previously determined provisional measures cap rate.[26] The Department finds that notwithstanding this litigation, the provisional measures cap established in section 737(a) of the Act does not change. As explained in more detail below in Comment 1, the provisional measures cap is established by the amount of security collected during the provisional measures period and the amount of the cap is not revisited if the Department makes methodological changes as a result of a redetermination.

Given that any further precision in determining seven of the eight plaintiffs' above *de minimis* separate rate would be inconsequential, it would be imprudent to proceed, in the absence of the necessary information, with the resource-intensive calculations required to further specify their separate rate.[27] Expending a considerable amount of the Department's limited administrative resources, as well as the CIT's judicial resources, in order to establish a precise dumping rate that would never be applicable would be a wasteful and futile exercise. Where possible and proper, the court has endeavored "to avoid such a waste of administrative and judicial resources."[28] Moreover, given the limited information currently on the record and that establishing a precise rate for these seven companies would require the Department to collect and verify further information, the Department will avoid wasting its own resources, as well as their resources, if it determines to refrain from calculating a more precise rate.[29]

For the one respondent not included in the first administrative review, Changzhou Hawd, which certified that it had no shipments of subject merchandise to the United States during the

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[26] *Id.*

[27] *See Changzhou Wujin Fine Chemical Factory Co., Ltd. v. United States*, Slip Op. 13-127 (Ct. Int'l Trade Oct. 2, 2013) (affirming the Department's finding that the separate rate companies had above *de minimis* rates without assigning an exact antidumping duty rate).

[28] *See Union Camp Corp. v. United States*, 53 F. Supp. 2d 1310, 1325 (Ct. Int'l Trade 1999) (citing *Timken Co. v. United States*, 1 F. Supp. 2d 1390, 1393 (Ct. Int'l Trade 1998) (setting aside a remand order where further investigation would "unnecessarily expend limited administrative resources")).

[29] *See Changzhou Wujin*, Slip Op. 13-127 at 11.

review period, we intend to issue a full questionnaire and conduct a full investigation to provide the company with its own calculated rate.[30] Because Changzhou Hawd is not part of the first administrative review, its cash deposit rate will not be replaced by rates determined in the first administrative review.[31] Also, with the very limited information currently on the record, the Department is unable to calculate a dumping rate based on Changzhou Hawd's own economic reality because the record only contains aggregate quantity and value data and Changzhou Hawd's separate rate application.[32] These limited data do not allow the Department to make any determinations on Changzhou Hawd's "economic reality," as ordered by the Court. Therefore, the Department needs to conduct a full investigation, including questionnaires, any supplemental questionnaires, and verification as required by the statute.[33]

III. SUMMARY AND ANALYSIS OF LITIGANTS' COMMENTS

We received comments from interested parties regarding the separate rate companies' margin calculation. These comments are addressed, below. After considering all parties' comments, we have made minor changes to our Draft Redetermination in this final redetermination, including clarifying that the provisional measures deposit cap rate in effect was not affected by this litigation.

1. Separate Rate Methodology

Petitioner Comments:

[30] *See* Submission of Changzhou Hawd, "Multilayered Wood Flooring from the People's Republic of China: No Sales Certification," dated March 28, 2013. The Department confirmed with U.S. Customs and Border Protection that Changzhou Hawd did not have any shipments of subject merchandise to the United States during the first administrative period of review. *See Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 79 FR 70267, 70268 (November 25, 2013).

[31] *See* 19 CFR 351.213(d)(3).

[32] In Changzhou Hawd's separate rate application, which was submitted on January 18, 2011, it submitted very limited commercial data from which a margin could be derived as well as information responding to the Department's questions to establish whether it was *de facto* and *de jure* independent from the People's Republic of China government.

[33] *See* section 782(i) of the Act; 19 CFR 351.307(b)(i).

The Coalition for American Hardwood Parity ("CAHP"), petitioner in the underlying investigation, concurs with the Department's draft remand results, and states that the results adhere to the CIT's direction to articulate a rational connection between "economic reality" and the rate applied to the litigating separate rate respondents.[34] CAHP states that the Department employed a reasonable methodology to assign a separate rate because it accounts for the three *de minimis* recipients while acknowledging that there are 110 companies of indeterminate size that are presumed to have engaged in dumping, and which were duly assigned an AFA rate.[35] CAHP asserts that the methodology used initially by the Department to calculate a separate-rate margin was in accordance with the methodology affirmed by the Federal Circuit in *Bestpak*, which stated that a separate-rate margin could reflect both *de minimis* and AFA rates.[36] CAHP notes that the underlying purpose of the application of AFA is to "ensure that a party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[37] CAHP argues that ignoring this fact would undermine the Department's ability to calculate dumping margins as accurately as possible.[38] CAHP's position regarding the Department's initial separate-rate calculation notwithstanding, CAHP accedes to the Department's position that, at this point in the litigation, the calculation of a more specific margin than that put forth in the draft would require

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[34] *See* Letter from CAHP, "Multilayered Wood Flooring from the People's Republic of China: Comments on Draft Results of Redetermination Pursuant to Court Order," dated May 5, 2014, ("CAHP May 5, 2014, Remand Comments"), at 2, citing Draft Results of Redetermination Pursuant to Court Order: *Baroque Timber Industries (Zhongshan) Company, Limited et. al v. United States*, Consol. Court No. 12-00007, Slip-Op. 14-35 ("Draft Results") (April 29, 2014); *see also* Letter from CAHP, "Multilayered Wood Flooring from the People's Republic of China: Comments on Draft Results of Redetermination Pursuant to Court Order," dated May 12, 2014, ("CAHP May 12, 2014, Remand Comments").

[35] *See* CAHP May 5, 2014, Remand Comments at 2 and 6.

[36] *Id.* at 3, citing *Yangzhou Bestpak Gifts & Crafts Co. Ltd. v. United States*, _F.3d._, Slip Op, 2013-1312 (Fed.Cir., May 20, 2013)("*Bestpak*") at 13 ("...1673d(c)(5)(B) and the SAA explicitly allow Commerce to factor both *de minimis* and AFA rates into the {separate-rate} calculation methodology.") CAHP argues that while the *Bestpak* Court found that the Department's methodology was unreasonable in light of the unique facts presented in that case, the facts in the instant proceeding are significantly different because the AFA rate in the instant proceeding is derived from an actual commercial transaction rather than a corroborated petition rate.

[37] *Id.* at 6, citing *Branco Peres Citrus, S.A. v. United States*, 25 CIT 1179, 1184 (2001).

[38] *Id.*, citing *Bestpak* at 15 (citing to *Rhone Poulnec, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed.Cir. 1990).

an undue and unnecessary expenditure of resources, as the separate-rate in the final results of the first administrative review would supersede the rate determined in the underlying investigation for those litigants that were not specifically examined in the first review.[39]

CAHP rebuts Armstrong's contention that the only difference between the separate rate respondents and the mandatory respondents is that the Department sampled the mandatory respondents for individual investigation and did not sample the other separate rate respondents.[40] CAHP notes that the mandatory respondents submitted complete and detailed questionnaire responses which were subject to review by both the Department and other parties, including CAHP, as well as several rounds of deficiency questionnaires and verification by the Department. In contrast, the separate rate respondents only submitted a separate rate application.

CAHP contends that Armstrong's reliance on its *de minimis* rate in the final results of the first administrative review of this order as evidence that Armstrong did not dump in the investigation is not dispositive or even probative. As the Department noted in the Draft Results, the discipline of the antidumping 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 period of investigation.

CAHP disagrees with Armstrong and Fine Furniture's reference to the CIT's decision in *Albemarle Corp. v. United States*[41] as supportive of their position of assigning them a zero rate. CAHP contends that a central point in the *Albemarle* proceeding involved the relevance of margins assigned in a prior administrative review to the third review subject to the court appeal.

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[39] *See id.* at 4.
[40] *See* CAHP May 12, 2014, Remand Comments at 4.
[41] *See Albemarle Corp. v. United States*, Consol. Court No. 11-00451, Slip Op. 13-106 ("*Albemarle*") (Ct. Int'l Trade Aug. 15, 2013), Final Results of Redetermination Pursuant to Court Remand (January 10, 2014), ECF No. 96 at 13.

In the instant case, CAHP argues that the contemporaneity of data or prices is not in dispute since all data used in the calculation of rates was based on data in the same time period (*i.e.*, POI).

Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature, and Karly Wood Comments:

Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature, and Karly Wood argue that the calculation of the separate rate respondents' rate is not moot due to the rate obtained in the final results of the first administrative review because provisional measures serve as a cap on liability during the period in which they are in effect.[42] Therefore, they contend that the Department must calculate a specific separate rate for both the investigation and first administrative review for the separate rate respondents so that the Department knows which rate to apply as the cap when issuing liquidation instructions for the entries in the first administrative review, pursuant to 19 CFR 351.212(d). Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature and Karly Wood also note that because the amended preliminary determination rate was based on an average of the AFA rate and the calculated zero or *de minimis* rates of the mandatory respondents, a methodology the CIT held was unreasonable, the Department should calculate both the amended preliminary determination and final determination rates in accordance with the law because both of these rates will be used as deposit cap rates.

In addition, Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature, and Karly Wood state that it is not reasonable for the Department to assign a separate rate above *de minimis* when all individually reviewed companies' rates were *de minimis* because the appropriate method for calculating the rates for cooperating non-mandatory respondents is to use

[42] See Letter from Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature and Karly Wood, "Multilayered Wood Flooring from the People's Republic of China: Response to Department's Request for Comments," dated May 2, 2014, at 4.

the weighted average rates of individually investigated companies. They argue that the Department erred in assigning the cooperating non-mandatory respondents the PRC-wide rate and failed to make a credible link between the adverse rate assigned to the PRC-wide entity and the cooperating separate rate respondents. They also contend that it is unreasonable to consider rates in the final results of the first review to justify the rate assigned in the draft second remand because each segment stands alone, resting on the unique facts, laws and policies.

Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature, and Karly Wood further argue that in *Bestpak*,[43] the CAFC rejected the use of an AFA rate derived from a cooperating *de minimis* mandatory respondent as part of the calculation of the separate rate. They state that it was very significant to the *Bestpak* Court that a single very high rate was not deemed representative of the separate rate candidate's trading activity. There, like here, the Department's "all others" separate rate assignment was "untethered" to the three respondents' actual dumping margins and falls short of amounting to substantial evidence.[44] They claim that it is not reasonable to conclude that the costs and sales practices of the state-controlled PRC-wide entity should be similar to private companies' dumping margins. Therefore, they argue that the Department should apply a rate coming from a neutral inference, which is a mid-point weighted-average *de minimis* margin of the mandatory respondents. In the past, the Department has relied on zero or *de minimis* rates in the calculation of the separate rate.[45]

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[43] *See Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370 (Fed. Cir. 2013) ("*Bestpak*").
[44] *See* Letter from Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature and Karly Wood, "Multilayered Wood Flooring from the People's Republic of China: Response to Department's Request for Comments," dated May 2, 2014, at 11.
[45] *See, e.g., Brake Rotors From the People's Republic of China: Final Results of 2006-2007 Administrative and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review,* 73 FR 32678 (June 10, 2008) and accompanying Issues and Decision Memorandum at Comment 1; *Diamond Sawblades and Parts Thereof from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review: 2010-2011,* 78 FR 42930 (July 18, 2013) and accompanying Decision Memorandum; *Honey from Argentina: Final Results of Antidumping Duty Review*, 70 FR 19926 (April 15, 2005), *Amanda Foods (Vietnam) Ltd. v. United States*, Slip Op.

Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature, and Karly Wood contend that the *Changzhou Wujin* court was facing a different situation than in the instant case because: 1) all entries prior to the U.S. International Trade Commission's decision would have been liquidated without regard to antidumping duties, while in the instant case, none of the entries have been liquidated; and 2) there was only one cooperating mandatory respondent, rather than three in the instant case.

Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature, and Karly Wood conclude that the Department should apply a *de minimis* rate to the separate rate respondents and exclude them from the antidumping duty order.

Fine Furniture Comments:

Fine Furniture argues that the Department's Draft Redetermination is not supported by the facts of the case, and that the Department has still not provided a rational connection between the rate assigned to the separate rate companies and those companies' economic reality. Fine Furniture asserts that the Department has made presumptions about the 110 companies that did not submit Q&V responses, and that these presumptions neither qualify as evidence, nor demonstrate that the assigned separate rate bears any relationship to the separate rate companies' economic reality. Fine Furniture states that the Department presumed that these 110 uncooperative Q&V respondents would have had above-*de minimis* margins if they had participated, and that at least one of these 110 unresponsive companies would have been large enough to have been selected as a mandatory respondent and had its margin form part of the separate rate calculation. Fine Furniture claims that the Department's use of these 110 uncooperative respondents' rates does not comport with the statute's envisioned method of

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2011-39 (Ct. Int'l Trade April 14, 2011) ("*Amanda 2011*"), *Amanda Foods (Vietnam) Ltd. v. United States*, 35 CIT ___, 714 F. Supp. 2d 1282, 1291-92 (Ct. Int'l Trade 2010) ("*Amanda 2010*").

determining a separate rate by averaging the estimated weighted average dumping margins determined for exporters and producers individually examined. Fine Furniture contends that although the Department stated that it was not applying an adverse presumption to the cooperating parties, it did not appear to consider the more likely explanation that the non-responding companies did not export subject merchandise.

Fine Furniture also argues that the Department may not lawfully make assumptions about the investigation separate rate by looking at the results of the first review, noting that antidumping rates change from one period to another. Fine Furniture notes that the Department found an above-*de minimis* margin for Layo Wood in the first review, but that it will still exclude Layo Wood from the order based on the first redetermination of the remanded investigation. Fine Furniture states that the Department's treatment of Layo Wood demonstrates the lack of a relationship between the investigation and the administrative review.

Fine Furniture asserts that the Department's separate rate methodology in the Draft Redetermination is not supported by case law or precedent. Fine Furniture states that *Changzhou Wujin*[46] is distinguished from the present case for the following reasons: (1) in *Changzhou Wujin*, one mandatory respondent received a *de minimis* margin and the other mandatory respondent received an AFA margin, while in the present case, all three mandatory respondents received *de minimis* margins; (2) in *Changzhou Wujin*, no separate rate company submitted full questionnaire responses, while in the present case, Fine Furniture did; and (3) in *Changzhou Wujin*, the entries for which a rate was to be calculated had already been liquidated, while in the present case, they have not yet been liquidated. Further, Fine Furniture states that in *Changzhou Wujin*, the CIT said that other alternatives existed (such as calculating a specific rate for the

[46] *Changzhou Wujin Fine Chem. Factory Co. v. United States*, 968 F. Supp. 2d 1294 (CIT 2014).

separate rate respondent), but that the Department gave a legitimate explanation for not exercising the alternatives, while in the present case, the Department has other alternatives available and must examine them before assigning Fine Furniture a fictitious rate that bears no relationship to its economic reality.

Fine Furniture contends that the precedent in *Bestpak* requires the Department to calculate a separate rate that bears some relation to actual dumping margins, and that the Department's assumption of an above-*de minimis* margin without record evidence specific to Fine Furniture fails the *Bestpak* standard of establishing a relation to economic reality or commercial activity. Additionally, Fine Furniture claims that the methodology used in the Draft Redetermination is in direct conflict with the Department's redetermination in *Albemarle*.[47] Fine Furniture notes that in that case, where the mandatory respondents had zero or *de minimis* margins, the Department assigned the mandatory respondents' *de minimis* margin to those separate rate respondents that had never before been assigned their own individual rate. Fine Furniture claims that the Department in the instant case completely reversed its course and ignored the precedent set by *Albemarle*.

Fine Furniture asserts that the Department cannot "punt" its calculation of a separate rate and, instead, simply report an amorphous "above-*de minimis*" margin.[48] Fine Furniture argues that the CIT has evaluated the reasonableness of various assigned separate rates by relative numerical levels, and that the Department cannot skirt judicial review by masking the impact of including adverse inferences in its separate rate determination.

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[47] *Albemarle Corp. v. United States*, Consol. Court No. 11-00451. Fine Furniture cites *Final Results of Redetermination Pursuant to Court Remand, Albemarle Corp. v. United States*, Consol. Court No. 11-00451, Slip Op. 13-106 (CIT Aug. 15, 2013) (Jan. 10, 2014), ECF No. 96.

[48] *See* Letter from Fine Furniture, "Multilayered Wood Flooring from the People's Republic of China: Comments of Fine Furniture (Shanghai) Limited on Draft Results of Redetermination Pursuant to Court Order (Consol. Ct. No. 12-00007, Slip Op.14-35)," dated May 2, 2014, at 12.

Fine Furniture additionally claims that the rates of the mandatory respondents are reflective of the non-selected respondents and the industry as a whole, and that such a premise is inherent in the separate rate methodology.[49] It notes that the Department has calculated a separate rate as an average of mandatory rates when all such rates were AFA, even though the Act prefers that AFA be excluded from the calculation.[50] Fine Furniture claims that the logical presumption from the mandatory respondents having *de minimis* calculated rates is that the industry as a whole would be *de minimis* if individually investigated. It claims that the actually calculated *de minimis* rates are more probative of the experience of all other companies than the speculative above-*de minimis* rates that may have been calculated for the uncooperative Q&V respondents. It concludes that the only rates relevant to the calculation of Fine Furniture's separate rate are the mandatory respondents' rates.

Armstrong Comments:

Armstrong Wood Products (Kunshan) Co., Ltd., and Armstrong World Industries (collectively, "Armstrong") argue that the Department's separate rate calculation methodology is not reasonable within the meaning of section 735(c)(5)(B) of the Act, does not reflect the economic reality of Armstrong and the other separate-rate respondents, and is contrary to the law.[51] According to Armstrong, the Department's Draft Redetermination is based on a series of unwarranted presumptions and inferences that fail to explain why its separate-rate methodology was reasonably reflective of the separate-rate respondents' "factual situation" or "economic

[49] Fine Furniture cites *Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1380 (CIT 2009) and *Nat'l Knitwear & Sportswear Ass'n v. United States*, 779 F. Supp. 1364, 1373 (CIT 1991).
[50] Fine Furniture cites *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 7475, 7478 (February 14, 2005).
[51] *See* Letter from Armstrong, "Multilayered Wood Flooring from the People's Republic of China (4/1/10-9/30/10): Comments on Draft Redetermination," dated May 4, 2014, ("Armstrong Remand May 4 Comments") at 1-2.

reality" as the Court directed.[52] Armstrong states that the courts have observed that presumptions may not serve as evidence,[53] and that the "mere presence of non-cooperating parties {does not justify the} choice of dumping margins assigned to cooperative uninvestigated respondents."[54]

Armstrong asserts that the Department's draft methodology fails to use rates for investigated companies as required by the Act.[55] Armstrong states that section 735(c)(5)(B) of the Act indicates a strong legislative preference for the use of rates determined for individually investigated companies (*i.e.*, the mandatory respondents), and that Department's use of the "any reasonable method" alternative should reflect this preference.[56] Armstrong further states that the Department's past practice of assigning an AFA rate as the separate rate in cases where all investigated companies received AFA rates, and applying zero rates where all investigated rates were determined to be zero is consistent with this legislative preference.[57] Armstrong argues that the Department may not depart from this legislative preference without explanation.

Armstrong argues that the rates of the individually investigated mandatory respondents are representative of the cooperative separate-rate respondents.[58] Armstrong states that each of these cooperative respondents filed timely quantity and value and separate rate responses, and submitted themselves for consideration as mandatory respondents. Armstrong argues that the

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[52] *See id.* at 2-3, citing *Baroque Timber Industries (Zhongshan) Company, Limited v. United States*, Consol. Ct. No. 12-00007, Slip Op. 14-35 (March 31, 2014) ("*Baroque Timber Industries III*").
[53] *See id.*, 2-3, citing *Baroque Timber Industries III*, at 21, n.32 (citing *Routen v. W.*, 142 f.3D 1434, 1439 (Fed.Cir, 1998)).
[54] *Id.* at 3, citing *Baroque Timber Industries III*, at 20 (citing *Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp.2d 1368, 1381 (CIT 2009)).
[55] *Id.* at 4.
[56] *Id.*
[57] *Id.* at 4 citing (Final Results of Redetermination Pursuant to Court Remand, *Albemarle Corp. v. United States*, Consol. Ct. No. 11-00451, Slip Op. 13-106 (Ct. Int'l Trade Aug. 15, 2013)(Jan 10, 2014); *Maclean-Fogg v. United States*, 853 F. Supp.2d 1336, 1340 (Ct. Int'l Trade July 30, 2012)); and *Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1381 (Ct. Int'l Trade 2009) ("*Amanda 2009*").
[58] *See id.* at 5.

SAA confirms that the Department's mandatory respondent selection methodology is designed to yield representative results, which the Department may not disregard now because a different selection methodology may have produced different results.[59] Armstrong further argues that the separate-rate applicants are more similar to the cooperative mandatory respondents than the non-cooperative PRC-wide entity.[60]

Armstrong disagrees with the Department's argument that the preliminary results of the first administrative review support the Department's inference that if it had selected non-cooperating companies for individual examination in the underlying investigation, it would have found above *de minimis* margins.[61] Armstrong argues, however, that if it were permissible to consider the results of the first administrative review in the context of the instant proceeding, then the results would support assigning a zero rate to Armstrong because it received a zero rate in the first review, and thus there is no evidence that Armstrong engaged in dumping.

Armstrong contends that the non-cooperative companies bear no reasonable relationship to the separate rate respondents because the separate rate respondents are not part of the China-wide entity.[62] Armstrong argues that the foundation of the Department's separate rate mechanism is that separate rate respondents are determined to be separate from the non-market economy-wide ("NME") entity and that the degree of the NME-wide entity's dumping has nothing to do with the separate rate respondents' margins.[63] According to Armstrong, establishing the separate rate respondents' margins based on a presumption about the likely

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[59] *Id.*, at 5, citing *Statement of Administrative Action*, 1994 U.S.C.C.A.N. 4040-4200-01 ("*SAA*").
[60] *Id.*, at 5-6.
[61] *Id.*, at 6.
[62] *See* Letter from Armstrong, "Multilayered Wood Flooring from the People's Republic of China (4/1/10-9/30/10): Additional Comments on Draft Remand Redetermination," dated May 12, 2014, ("Armstrong Remand May 12 Comments") at 2.
[63] *See id.*

degree of the China-wide entity's dumping, as the Department did in the Draft Redetermination, thus would negate the very foundation of the Department's separate rate mechanism.[64]

Armstrong contends that the circumstances in *Changzhou Wujin* are not the same as in the instant investigation and do not support the Department's Draft Redetermination.[65] In *Changzhou Wujin*, according to Armstrong, the court approved the Department's above *de minimis* margins for the separate rate respondents because: 1) one mandatory respondent received a *de minimis* rate and one received an AFA rate, so the Department was left with little pricing data to calculate a separate rate; and 2) it was unnecessary to calculate a separate rate because the subject entries had already been liquidated.[66] Neither circumstance is present in the instant case, according to Armstrong.[67] Also, in *Changzhou Wujin*, the two individually investigated companies received a zero and an AFA rate and the Department determined that the separate rate companies had margins above *de minimis* solely on such information. In the instant case, all three individually investigated companies, which were selected by the Department as being representative of the uninvestigated cooperative respondents, received zero margins and the Department must accept the results of its investigation.[68] In response to CAHP's contention that basing the separate rate respondents' rate solely upon the *de minimis* rates calculated for the mandatory respondents would ignore the fact that there are 110 non-cooperating companies which are presumed to be dumping, Armstrong argues that the failure of the 110 non-cooperating companies to participate in the investigation is already reflected in the AFA margin assigned to the China-wide entity in the final determination in the investigation.[69] Finally, Armstrong

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[64] *Id.*
[65] *Id.*, at 3.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*, at 4.

contends that *Bestpak* supports its position that the expected methodology under the "any reasonable method" alternative is to calculate an average of mandatory respondents' rates, which are all zero in the instant case, and that it would not be reasonable to cherry-pick a single transaction by a mandatory respondent that is above *de minimis* because dumping margins are calculated on the basis of all sales in the investigated period.[70]

Lumber Liquidators Services, LLC ("Lumber Liquidators") Comments:

Lumber Liquidators contends that the Department's refusal to recalculate a specific separate rate is unlawful and unsupported by the administrative record.[71] According to Lumber Liquidators, the Department presents a new argument in this Draft Redetermination, that recalculating the margin for the separate rate respondents is futile, and is now precluded from raising this new argument after the first remand from the Court.[72] Lumber Liquidators asserts that the separate rate respondents seek not only a fair recalculation of the separate rate but also believe that this rate is *de minimis* and, accordingly, Commerce must exclude them from this antidumping order.[73] Lumber Liquidators maintains that by hiding behind the first administrative review and neglecting to recalculate a specific separate rate, the Department short circuits this process and fails to establish dumping margins as accurately as possible.[74] According to Lumber Liquidators, the Department's Draft Redetermination means that individual separate rate companies receive different separate rates for the same period of investigation, which is inconsistent with its separate rate methodology and is inherently unfair.[75]

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[70] *Id.*, at 5.
[71] *See* Letter from Lumber Liquidators, "Draft Redetermination Comments Multilayered Wood Flooring from the People's Republic of China," dated May 5, 2014, ("Lumber Liquidators May 5 Remand Comments") at 2.
[72] *Id.*
[73] *Id.*, at 3.
[74] *Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001).
[75] *See* Lumber Liquidators May 5 Remand Comments at 4.

Lumber Liquidators states that if in this second remand the Department still refuses to calculate the separate rate to *de minimis*, at a minimum the separate rate respondents' margin must be capped at 3.31 percent during the provisional measures deposit cap period,[76] pursuant to 19 USC 1673(f)(a).

Lumber Liquidators maintains that the Department has not provided a reasonable explanation for the use of an AFA rate in calculating the separate rate for cooperating companies and fails to provide a rationale for how the use of an AFA rate results in a reasonably accurate separate rate.[77] According to Lumber Liquidators, the Department assumes that all Chinese companies are dumping; otherwise they would be responding to the Department's Q&V questionnaires.[78] Lumber Liquidators argues that the Department has failed to consider that these companies could have had any number of reasons for not responding.[79] Further, Lumber Liquidators contends that the Department's argument appears to be based on the premise that a separate rate can never be zero or *de minimis*, but the Department fails to cite to any controlling precedent or legislative history to support this contention.[80]

Lumber Liquidators also argues that the Department has improperly drawn adverse inferences about the cooperating respondents in a situation where there was no need or justification for deterrence.[81] Citing *Changzhou Wujin*, Lumber Liquidators states that the court held that applying an adverse rate to cooperating respondents undercuts the cooperation-

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[76] *Id.*, at 4 (where Lumber Liquidators contends that the provisional measures deposit cap period applies to entries between the publication of the Department's preliminary determination in the investigation and the U.S. International Trade Commission's final determination. In this instant case, this period is May 26, 2011, to December 7, 2011).
[77] *See* Lumber Liquidators May 5 Remand Comments at 7-8.
[78] *Id.*, at 10.
[79] *Id.*
[80] *Id.*
[81] *See* Letter from Lumber Liquidators, "Additional Draft Redetermination Comments Multilayered Wood Flooring from the People's Republic of China," dated May 12, 2014, ("Lumber Liquidators May 12 Remand Comments") at 3.

promoting goal of the AFA statute.[82] Finally, Lumber Liquidators argues that CAHP must be precluded from proposing any new methodologies for recalculating the margins for the separate rate respondents at this juncture.[83]

Department Position:

Regarding the argument that the facts in *Changzhou Wujin*[84] are distinct and, therefore, that the CIT's holding in that case is inapplicable here, we do not agree. While some of the facts of *Changzhou Wujin* are not identical to those before us, there are important similarities between this redetermination and the facts in *Changzhou Wujin*.

First, in *Changzhou Wujin*, the Department found, and the CIT affirmed, that it was reasonable to infer that a non-cooperating respondent would have an above *de minimis* margin. Here, we are making the same inference as to the 110 non-cooperating companies. If the Department had received complete information from these companies, the Department may have chosen one of them as a mandatory respondent, and the Department can reasonably infer that these non-cooperating respondents would have cooperated if they would have obtained a zero or *de minimis* rate. Parties argue that the Department cannot know if one of the 110 non-cooperating companies would have been chosen as a mandatory respondent. We agree, but it is precisely the failure of the 110 companies to cooperate and to respond to the Department's requests for information that results in this predicament. To excuse or ignore the fact would reflect an incomplete reading of the record. In sum, it is the complete lack of cooperation that leaves the Department without any information on the record as to the size of these companies or the size of the Chinese wood flooring manufacturing market in general. Because the information

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[82] *Id.*
[83] *Id.*, at 5.
[84] *Changzhou Wujin Fine Chem. Factory Co. v. United States*, 968 F. Supp. 2d 1294 (CIT 2014) ("*Changzhou Wujin*").

was knowingly and willingly withheld, in the absence of this information, the Department is reasonably inferring that one of these companies may have been chosen.

Second, in *Changzhou Wujin*, the Department found, and the CIT affirmed, that it was reasonable not to assign a specific antidumping duty margin when it would never be applied, either as a cash deposit or for liquidation purposes. In that case, the reason for its non-application was that the entries in question were already liquidated. Here, the rates for seven of the eight plaintiffs have been superseded by the publication of the results of the first administrative review. Thus, any rates resulting from this redetermination would not be used for liquidation or cash deposit purposes.[85] Therefore, like in *Changzhou Wujin*, the Department determined that it would be an unnecessary use of administrative and judicial resources to investigate and calculate a specific antidumping duty margin that will never be applied.

Regarding the argument that the Department's separate rate calculation methodology does not reflect the economic reality of the separate rate respondents, as required by the Court, we agree with CAHP that we employed a reasonable methodology in assigning a rate to the separate rate respondents, and that this methodology reflects the economic reality of the separate rate respondents to the extent possible given the limited information available to the Department. For a company to establish its eligibility for a separate rate, the Department only requires the separate rate applicant to submit aggregate quantity and value data and a separate rate application with information to establish that the company is separate from the government. As a result, the separate rate applicants in this litigation submitted only a small fraction of the amount of information submitted by the mandatory respondents, and they were not required to respond to the Department's initial or supplemental questionnaires or undergo verification of their data.

[85] As explained in Issue 2 below, we will individually examine Changzhou Hawd and calculate a rate based on its own economic reality.

Thus, the record of the investigation does not contain necessary and sufficient information to determine the specific economic reality of each individual separate rate respondent. With these limitations in mind, we must consider the information on the record to evaluate the economic reality of the industry and the separate rate respondents to the extent possible.

In this case, with so little information on the record with respect to the separate rate respondents, we find that the best available information concerning their economic reality is the economic reality of all companies subject to the investigation and the industry as a whole. Specifically, in this case, this includes the three mandatory respondents, as well as 110 companies that did not respond to the Department's Q&V questionnaire. We find that only considering the experience of the three mandatory respondents as a substitute for the unknown economic reality of the separate rate respondents, as proposed by the separate rate plaintiffs, would not be the best available information because it reflects an incomplete reading of the record and completely excludes from consideration 110 other companies, with which the separate rate respondents may share a common economic reality.

Regarding the arguments that the Department failed to make a credible link between the adverse rate assigned to the PRC-wide entity and the cooperating separate rate respondents, and that the Department's presumptions about the 110 non-responsive companies neither qualify as evidence, nor demonstrate that the assigned separate rate bears any relationship to the separate rate companies' economic reality, we disagree. As explained above, the Department is looking at the record as a whole, which includes both cooperating mandatory respondents and the 110 non-cooperating companies. The Department determines that looking only at the mandatory respondents' rates provides an incomplete picture. Furthermore, the Department is not making

an adverse inference or linking the adverse rate assigned to the PRC-wide entity to the cooperating separate rate companies.

We also disagree with the assertion that the logical presumption from the mandatory respondents having *de minimis* calculated rates is that the industry as a whole would be *de minimis* if individually investigated. All companies to which the Department issued Q&V questionnaires were on notice that their failure to respond to the questionnaire might result in the application of adverse inferences. Therefore, it is reasonable to assume that implicit in their decision not to respond was a conclusion that it was in their best interests to accept the adverse inferences rather than cooperate. It is thus reasonable to infer that at least some of those 110 companies were dumping and would have cooperated with the Department's investigation if they could have obtained a low rate.[86] Further, as stated above, we find that the best available information with which to determine the economic reality of the separate rate companies is the totality of the economic realities of *all* other companies subject to the investigation, which includes both cooperative and non-cooperative parties.

Certain separate rate plaintiffs argue that in *Bestpak*, the Court of Appeals rejected the calculation of a separate rate margin that included both an AFA rate and a rate derived from a cooperating *de minimis* mandatory respondent because it was not representative of the separate rate candidate's trading activity. We note that in this redetermination we have not used an AFA

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[86] *See Baroque Timber II* at 20 (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..."); *see also Changzhou Wujin Fine Chemical Factory Co., Ltd. v. United States*, Slip Op. 13-127 (Ct. Int'l Trade Oct. 2, 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 (Ct. Int'l Trade 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).

rate as part of the calculation of the separate rate of "above *de minimis*;" for example, the AFA PRC-wide entity rate of 25.62 is not averaged with a *de minimis* margin of a mandatory respondent as was the case in *Bestpak*. Rather, we are concluding that it is reasonable to infer that some of the 110 companies would have received above *de minimis* margins had they cooperated and been individually examined and thus, under the statute's preferred methodology for determining the rate for non-examined entities, the separate rate respondents would have received that above *de minimis* rate.

Certain separate rate plaintiffs argue that the Department should apply a separate rate coming from a "neutral inference," which they deem to be the mid-point weighted-average of the mandatory respondents' *de minimis* margins. However, we disagree that such a finding would, in fact, have a neutral inference. On the contrary, we find that it would completely ignore the 110 companies that withheld information from the Department by choosing not to participate in the investigation. We find that the method used in this redetermination is actually neutral, in that it considers all available information on the record, including the economic realities of both the participating mandatory respondents, as well as the non-participating companies.

Regarding the arguments that the assigned above-*de minimis* separate rate is unreasonable, that the Department should calculate the separate rate using the weighted average rates of individually investigated companies, and that the methodology used in the draft redetermination is in direct conflict with the Department's redeterminations in *Albemarle*,

Amanda 2011, *Amanda 2010*, and other administrative reviews conducted by the Department,[87] we disagree. The cases cited by the separate rate plaintiffs, in which certain separate rate respondents received a zero or *de minimis* margin when all mandatory respondents received zero or *de minimis* margins, were administrative reviews with, for example, a considerable history of zero or *de minimis* margins, whereas the proceeding at issue in this remand redetermination is an investigation. While we have assigned zero or *de minimis* rates to separate rate respondents under limited circumstances in administrative reviews pursuant to section 735(c)(5)(B) of the Act, where all individually reviewed respondents had calculated margins which were zero or *de minimis*, these circumstances are not present in this redetermination. For example, for *Brake Rotors from China*, the Department assigned zero margins to the separate rate respondents because the Department had determined that "the brake rotor firms are fairly homogenous in terms of economic characteristics" and there was a history of zero or *de minimis* margins.[88] *Diamond Sawblades from China* is distinguishable from the instant case because "all prior rates for that proceeding had been calculated using a methodology the Department abandoned."[89] Therefore, there were no other rates in the proceeding that the Department could apply. In *Shrimp from Vietnam* (and the *Amanda* series of cases that resulted), there was a multi-review

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[87] Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature, and Karly Wood cite *Brake Rotors From the People's Republic of China: Final Results of 2006-2007 Administrative and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review,* 73 FR 32678 (June 10, 2008) and accompanying Issues and Decision Memorandum at Comment 1; *Diamond Sawblades and Parts Thereof from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review: 2010-2011,* 78 FR 42930 (July 18, 2013) and accompanying Decision Memorandum; *Honey from Argentina: Final Results of Antidumping Duty Review*, 70 FR 19926 (April 15, 2005); *Amanda 2009; Amanda 2010*; *Amanda 2011; Diamond Sawblades and Parts Thereof from the People's Republic of China: Amended Final Results of Review*, 78 FR 42930 (July 18, 2013) ("*Diamond Sawblades from China*") and accompanying Decision Memorandum for Amended Final Results of Antidumping Duty Review: Diamond Sawblades and Parts Thereof from the People's Republic of China Covering Period November 1, 2010, through October 31, 2011 (July 11, 2013).

[88] *See Brake Rotors from China* and accompanying Issues and Decision Memorandum, at Comment 1.

[89] *Diamond Sawblades and Parts Thereof from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review: 2010-2011,* 78 FR 42930 (July 18, 2013) and accompanying Decision Memorandum.

history of zero and *de minimis* rates.[90] Finally, the plaintiffs' arguments about *Honey from Argentina* are misplaced. In that review, six companies were individually investigated and received their own calculated zero or *de minimis* margins.[91] The one company that failed to participate received an AFA rate.

Certain separate rate plaintiffs argue that, because the three mandatory respondents in this investigation received zero or *de minimis* rates, the Department must assign the eight separate rate respondents antidumping duty margins of zero percent and exclude them from the order. However, we find that assigning a zero percent rate to the separate rate companies and excluding them from the order is not appropriate in this case because such a determination would not be supported by the record information concerning the economic reality of the industry and thus the separate rate companies. As explained above, we find that the best available information with which to determine the economic reality of the separate rate companies is the economic reality of all other companies subject to the investigation, which includes both cooperative and non-cooperative parties. The combination of experience of the mandatory respondents, as well as the 110 non-responsive companies, provides the best available approximation of what we expect the experience of the separate rate companies to be. For the reasons explained above, this best available information supports a finding that the separate rate companies' margin would be above *de minimis* had the 110 companies cooperated and our preferred methodology for assigning rates to non-examined entities been employed. It does not support a finding that their margin would be identical to the individually examined respondents. Assigning the separate rate companies a zero percent margin and excluding them from the order would reflect an incomplete

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[90] *See Amanda 2009*; *Amanda 2010*; *Amanda 2011*.

[91] *See Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 77,195 (Dec. 27, 2004), unchanged in *Honey from Argentina: Final Results of Administrative Review*, 70 FR 19,926 (Apr. 15, 2005).

reading of the record and fail to take into account the experience of the vast majority of companies subject to the investigation (*i.e.*, the 110 non-responsive companies); thus, it would not be based on the best available information concerning the economic reality of the separate rate companies.

In addition, our decision not to assign the separate rate plaintiffs zero or *de minimis* margins because we reasonably infer that we would have found dumping during the POI is further supported by the results of the first administrative review. In the first administrative review results, we found evidence of continued dumping. In fact, one of the separate rate plaintiffs, Fine Furniture, has a calculated antidumping duty margin of 5.74 percent.[92] Because we found dumping with the discipline of an order in place, it is reasonable to infer that Fine Furniture was also dumping during the POI, prior to the imposition of the antidumping duty order. With respect to the companies that received a zero margin in the first administrative review, we agree with CAHP that many companies change their pricing practices to eliminate the price discrimination found in the investigation. Therefore, the fact that certain companies received zero rates during the first administrative review fails to demonstrate that they must receive a zero rate for the period of investigation.

Regarding the arguments that the Department must calculate a precise separate rate margin, rather than only finding the rate to be "above-*de minimis*," and that the calculation of the separate rate respondents' rate is not moot, we disagree. As explained in the redetermination, the rate determined in the first administrative review supersedes the cash deposit rate established in the final determination of the investigation, and the liquidation rates for seven of the separate rate plaintiffs will be based on the assessment rates determined in the first administrative review,

[92] *See Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012,* 79 FR 26712 (May 9, 2014).

rather than by the any rates resulting from this litigation.[93] Given that assigning a precise separate rate would be resource-intensive, and considering the limits on the Department's administrative resources and the court's judicial resources, we continue to believe that establishing a precise margin for the separate rate plaintiffs would be a waste of administrative and judicial resources, which the court has endeavored to avoid where possible and proper.[94] We disagree with a separate rate plaintiff's assertion that the Department is attempting to avoid judicial review of its redetermination by assigning a non-specific, above-*de minimis* rate. Rather, we have merely found that expending the resources of the Department and separate rate plaintiffs to calculate a specific rate is not justified when the rate has already been superseded by the rates assigned in the first administrative review.

Comments from interested parties have asserted that the separate rate assigned in this remand redetermination impacts the provisional measures cap.[95] We disagree. Section 737(a) of the Act describes the provisional measures cap. In sum, if the "amount of a cash deposit, or the amount of any bond or other security" determined at the preliminary determination is different from that determined at the final determination, the sum is disregarded if the security was lower than the duty or refunded if the security was higher. From May 26, 2011, the date of the preliminary determination, until October 18, 2011, the date of the final determination, the

[93] *See* section 751(a)(2)(C) of the Act.
[94] *See Union Camp Corp. v. United States*, 53 F. Supp. 2d 1310, 1325 (Ct. Int'l Trade 1999) (citing *Timken Co. v. United States*, 1 F. Supp. 2d 1390, 1393 (Ct. Int'l Trade 1998) (setting aside a remand order where further investigation would "unnecessarily expend limited administrative resources")).
[95] *See* sections 733(d) & 737(a) of the Act (the provisional measures period is the time period between the Department's preliminary determination and notice of the ITC's final injury determination and this period cannot exceed six months); *see also* 19 CFR 351.212(d) (during the provisional measures period the amount of duties that may be assessed is capped by the rates the Department determined in the preliminary and final determinations); *see also Universal Polybag Co., Ltd. v. United States*, 577 F. Supp. 2d 1281 (Ct. Int'l Trade 2008); *Thai Pineapple Canning Indus. Corp. v. United States*, 2000 WL *174986; *Daewoo Electronics Co., Ltd. v. United States*, 712 F. Supp. 931 (Ct. Int'l Trade 1989).

amount of provisional measures collected, and thus the cap, was set at 6.78 percent.[96] After the publication of the final determination, the provisional measures collected, and thus the cap, was changed to 3.31 percent, which was later amended to 3.30 percent.[97] Therefore, the provisional measures cap from October 18, 2011, until the expiration of the provisional measures period on November 22, 2011, was the amount deposited as a result of the final LTFV determination.

For the first part of the provisional measures period, namely from May 26, 2011, until October 18, 2011, the provisional measures cap has no effect because the rate calculated in the first administrative review is 5.74 percent which is lower than the cap of 6.78 percent. For the second part of the period, namely from October 18, 2011, until November 22, 2011, the cap has an effect because the 3.30 percent rate is lower than the 5.74 percent rate calculated in the first review. Thus, from October 18, 2011 until November 22, 2011, the Department will not collect any additional duties beyond the 3.30 percent already collected as a security.

As long as the Department ensures that no greater amount of duty is collected than that which was collected as a security during the provisional measures period, the Department has complied with the provisional measures cap provision in the Act. Thus, notwithstanding this Court's determination that that certain methodological choices were invalid in the LTFV investigation, the cap remains unchanged because the cap "merely provides for a use to which the duty rates computed with the preliminary determination are to be put, without in any way stating how they should be determined."[98] In this regard, the provisional measures cap is established by a completed past event (*i.e.*, the amount collected as a security during the

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[96] *See Amended Preliminary Determination.* The Preliminary Determination set the rate at 10.88 percent but 4.1 percent was refunded after the publication of the Amended Preliminary Determination.

[97] *See Final Determination; Amended Final Determination and Order*, 76 FR 76435 (Dec. 7, 2011). *See also Daewoo Electronics Co., Ltd. v. United States*, 712 F. Supp. 931 (Ct. Int'l Trade 1989) (stating that provisional measures are changed as a result of the publication of the final determination).

[98] *See Yantai Oriental Juice Co. v. United States*, 26 CIT 605, 621 (Ct. Int'l Trade 2002).

provisional measures period) and is not revisited.[99] The plain language of the Act and the legislative history indicate that duties be capped at the amount "collected" or "posted."[100] This Court has found that the rate is "based on the deposited amount, not an amount that a final determination indicates should have been deposited."[101] Therefore, the 3.30 percent cap remains in effect and is a "proper interpretation of the controlling statute and regulation."[102]

Certain separate rate companies argue that the Department should also change the provisional measures cap established in the preliminary determination (*i.e.*, this cap was in effect from May 26, 2011, until October 18, 2011) because the preliminary determination was invalid as it contained some of the methodological flaws this Court found in the final determination. As an initial matter, this Court's decision in *Baroque Timber* only applies to the final determination and this Court has made no finding with respect to the preliminary determination. Indeed, the Court's jurisdictional statute does not include a preliminary affirmative determination from a less than fair value investigation as a determination reviewable under 28 USC 1581(c) which is the jurisdiction the Court exercises in this action.[103] In any event, for the same reasons articulated above with the respect to the cap established in the final determination, the Department also finds the preliminary determination provisional measures cap does not change. The cap is established by the amount deposited during the provisional measures period and the amount of the cap is not revisited if the Department makes methodological changes as a result of a redetermination.

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[99] *Universal Polybag Co., Ltd. v. United States*, 577 F. Supp. 2d 1284, 1302 (Ct. Int'l Trade 2008).
[100] *Id.*; *see also* Trade Agreements Act of 1979, Pub.L. No. 96-39, 101, 93 Stat. 144, 173-74 (1979); Statement of Administrative Action accompanying the Trade Agreements Act of 1979, H.R. Doc. No. 96-152, pt. II, at 427-28 (1979), *reprinted in* 1979 U.S.C.C.A.N. 665, 695; S.Rep. No. 96-249, at 77, reprinted in 1979 U.S.C.C.A.N. 381, 463; H.R.Rep. No. 96-317, at 70.
[101] *Id.* at 1303.
[102] *Id.*
[103] 28 USC 1581(c) provides jurisdiction for the CIT to review AD/CVD determinations listed in 19 USC 1516a which, in turn, does not list the Department's preliminary AD/CVD determinations among the reviewable determinations.

Regarding the argument that it is unreasonable for the Department to consider rates assigned in the final results of the first review to justify the rate assigned in the second remand, we agree that the investigation and the first administrative review are separate proceedings with separate facts. However, it is important to note that a first administrative review has a particular relationship with the entries suspended during an investigation because the first administrative review period covers these entries. That is, the first administrative review period is 18 months and starts at the publication of the preliminary determination in the investigation.[104] Particularly because the first administrative review period covers the entries suspended during the investigation and because certain companies were found to be dumping in the first administrative review, even with the discipline of the order in place, we find that it is reasonable to infer that some companies would have been found to be dumping in the investigation as well, before the order was put in place.

Fine Furniture argues that the Department's exclusion of Layo Wood from the order, despite finding an above-*de minimis* margin in the first administrative review, demonstrates the lack of a relationship between proceedings. The Department disagrees. The Department did not make any finding with respect to Layo Wood in the final results of the first administrative review.[105] Layo Wood is excluded from the order because, after individual examination, it received a zero margin.[106] Thus, for Layo Wood it is irrelevant what its first review behavior is because it is not subject to the order as a result of this litigation. On the other hand, the first administrative review can be illuminating for respondents properly subject to the order. In any event, as discussed above, we note the particular relationship between the first administrative

[104] *See* 19 CFR 351.213(e)(1)(ii). The period of review of the first administrative review was May 26, 2011 through November 30, 2012. *See Final Results of First Administrative Review.*
[105] *See Final Results of First Administrative Review.*
[106] *See* First Remand Redetermination.

review period and the entries to which this redetermination applies. We find that this relationship establishes a sufficient link between this redetermination and the first administrative review, which supports our inference that assigning the separate companies a zero percent margin would not be appropriate in this redetermination.

2. Individual Investigation of Changzhou Hawd

With respect to the Department's decision to issue it a full questionnaire, Changzhou Hawd argues that the Department does not have authority to fully reinvestigate any separate rate respondent under the CIT's remand instructions, and that selection of one company for full investigation is not reasonable. Changzhou Hawd notes that the Department has the voluntary information of Fine Furniture available for the fourth sample in addition to the mandatory respondents. Also, Changzhou Hawd contends that there must be a reasonable method that could be devised to examine and test the separate rate respondents' data during the period without the need for significant additional investigation or preparation, especially given that the Department stated in this investigation that it did not have the resources to fully investigate additional respondents.[107]

Lumber Liquidators argues that the Department's proposal to conduct a full investigation of Changzhou Hawd is arbitrary and capricious because the Department now states it can find the resources to conduct a "full investigation" of a company that it declined to pick as a mandatory respondent during the original investigation.[108] Lumber Liquidators contends the Department's decision to now review Changzhou Hawd as a mandatory respondent appears to be an attempt to cherry-pick a respondent since the Department refused to accept voluntary

[107] See Letter from Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature and Karly Wood, "Multilayered Wood Flooring from the People's Republic of China: Response to Department's Request for Comments," dated May 12, 2014, at 4.
[108] *See* Lumber Liquidators May 5 Remand Comments at 5.

respondents in the original investigation, citing lack of resources.[109] Additionally, Lumber Liquidators states that the Department's decision to review a respondent over three years after the end of the AD investigation is inconsistent with strict statutory and regulatory deadlines set forth in the AD statute setting forth the time period for the Department to conduct AD investigations.[110] Moreover, it argues the proposed full investigation of Changzhou Hawd four years after the fact would be contrary to statute when its Q&V data did not initially place it in the pool of exporters and producers accounting for the largest volume of subject merchandise.[111]

Department Position:

We disagree with Changzhou Hawd and Lumber Liquidators that we cannot fully investigation Changzhou Hawd. As stated in the redetermination, Changzhou Hawd is not part of the first administrative review of this order because it certified that it had no shipments during the period of the first administrative review. As a result, its cash deposit rate will not be replaced by rates determined in the first administrative review of this order and the Department must determine a rate in this redetermination to serve as Changzhou Hawd's cash deposit rate for future entries. Because there is limited data on the record, as stated above in the redetermination, we are unable to calculate a rate for Changzhou Hawd based on its own economic reality. Therefore, in order to calculate a rate for Changzhou Hawd based on its own economic reality, we are individually examining Changzhou Hawd by issuing it a full questionnaire, analyzing the data and issuing supplemental questionnaires as needed, and then verifying the data, as required by the statute.

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[109] *Id.* at 5-6.
[110] *Id.* at 6.
[111] *Id.* at 7.

Regarding whether the Department has authority within the CIT's remand instructions to issue a questionnaire to Changzhou Hawd, there is no language in the CIT's order precluding the Department from doing so. Moreover, the Department proceeded in the same way in a case involving similar circumstances. In *Yangzhou Bestpak Gifts & Crafts*, the Department chose to review respondent Bestpak individually when its simple average of a zero and an AFA rate was remanded by the CAFC.[112]

Regarding Lumber Liquidators argument that the Department's decision to review a respondent over three years after the end of the AD investigation is inconsistent with strict statutory and regulatory deadlines set forth in the AD statute, we disagree. The original statutory and regulatory deadlines of an investigation do not apply to remand redeterminations. Instead, as is the case in any redetermination resulting from a remand, new deadlines will be set for this remand redetermination. Finally, it is confusing for Changzhou Hawd to, on the one hand, argue that the Department must account for its economic reality while also arguing that the Department cannot investigate that economic reality. The most direct way to account for Changzhou Hawd's economic reality is to individually investigate the company's manufacturing process, sales, and overall business structure, which is what the Department intends to do.

3. Individual Investigation of Fine Furniture

Fine Furniture argues that the Department's decision to issue an antidumping questionnaire to Changzhou Hawd, but not individually examine Fine Furniture's questionnaire responses, is an inconsistent application of antidumping duty law. Fine Furniture contends that the same type of information sought from Changzhou Hawd is already on the record of the investigation with respect to Fine Furniture, but that the Department has refused to analyze it.

[112] *See Yangzhou Bestpak Gifts & Crafts Co. v. United States*, Court No. 10-00295 (Ct. Int'l Trade 2013).

Fine Furniture argues that it has demonstrated its own economic reality during the POI, which it claims is similar to that of the mandatory respondents. Fine Furniture contends that the disparate treatment of Fine Furniture, compared to Changzhou Hawd, is a deliberate attempt to keep Fine Furniture in the antidumping duty order. Further, Fine Furniture states that because it availed itself of remedies at the administrative level by submitting questionnaire responses and surrogate value information, the Department's deliberate ignoring of Fine Furniture's information and separate rate calculation is unsustainable.[113]

Fine Furniture contends that the Department is incorrect in its conclusion that assigning a separate rate to Fine Furniture is unnecessary. First, Fine Furniture claims that because it already voluntarily submitted questionnaire responses and its own margin calculation, a company-specific margin calculation would require no additional Department resources. Second, Fine Furniture argues that the calculation of its own separate rate is critical because such a rate, if properly calculated, would remove Fine Furniture from being subject to the antidumping duty order, thus rendering the results of the first administrative review meaningless. Fine Furniture states that a similar finding was made for Layo Wood, and that Fine Furniture's result should be the same as Layo Wood's.

Additionally, Fine Furniture argues that the record of the investigation contains evidence that Fine Furniture is similar to the mandatory respondents, in terms of sales volume and average unit values, and dissimilar to the uncooperative Q&V respondents. Fine Furniture notes that while little is known about the 110 companies that failed to respond to the Department's Q&V questionnaire, the Department does know that these uncooperative companies all failed to participate to the best of their ability. In contrast, Fine Furniture differs from these companies

[113] Fine Furniture cites *Changzhou Wujin Fine Chem. Factory Co. v. United States*, 968 F. Supp. 2d 1294 (CIT 2014).

because it did participate to the best of its ability by submitting full questionnaire responses and surrogate value information to the Department, which makes it akin to the cooperative mandatory respondents. Fine Furniture argues that calculating a margin with its own data and the surrogate values used in the first remand redetermination would result in a *de minimis* dumping margin, and that this similarity to the mandatory respondents should be taken into account when assessing the commercial reality of the separate rate.

Finally, Fine Furniture argues that because its own calculated rate would be *de minimis*, the only reasonable approach is to exclude Fine Furniture from the order. It states that the Department could do so by: (1) assigning Fine Furniture an average of the mandatory respondents' rates; (2) relying on a comparison of Fine Furniture's AUVs to those of the mandatory respondents; or (3) relying on Fine Furniture's own calculated *de minimis* margin. Fine Furniture claims that this would be consistent with the Department's past practice of assigning a different rate to certain separate rate respondents when the separate rate can be based on the companies' own data.[114]

CAHP argues that Fine Furniture's request to be treated differently because it submitted a voluntary questionnaire response in the investigation should be rejected by the Department for the same reasons as stated in the *Final Determination.*

Department Position:

We disagree with Fine Furniture that the Department should analyze its questionnaire responses submitted during the investigation for this remand redetermination. In contrast to Changzhou Hawd, which the Department has selected for individual examination in this remand

[114] Fine Furniture cites *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191, 47195 (September 15, 2009).

redetermination, Fine Furniture received an updated cash deposit and liquidation rate from the first administrative review results. Thus, for the reasons stated above, investigating Fine Furniture would be a waste of administrative and judicial resources. Despite Fine Furniture's argument that a company-specific margin calculation would require no additional Department resources, in reality, it would take significant Department resources to fully analyze Fine Furniture's questionnaire responses, issue any necessary supplemental questionnaires, and complete a verification of Fine Furniture's sales and FOP data, in order to calculate a company-specific margin.

Regarding Fine Furniture's claim that it is similar to the mandatory respondents and therefore would inevitably receive a zero margin, we disagree. Because we have not analyzed Fine Furniture's full questionnaire response, issued supplemental questionnaires, or verified its data, we are unable to confirm the accuracy of Fine Furniture's submitted data, including its average unit values and especially its own calculated *de minimis* margin. Therefore, it is impossible for the Department to determine whether Fine Furniture is similar to the mandatory respondents, and it would be unreasonable for the Department to assign Fine Furniture a zero margin and exclude it from the order based on data which have not been analyzed or verified by the Department.

4. Time Allowed to Comment on the Draft Remand Redetermination

Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature, and Karly Wood argue that the parties were not granted sufficient time to comment on the Department's draft second remand redetermination. Specifically, the Department only granted an extension from 12:00 noon on Friday, May 2, 2014, to 9:00 am Monday, May 5, 2014, compared to the interested parties' request for a four business day extension.

Also, Lumber Liquidators opposed the Department's request for additional comments and 29-day extension of this redetermination because they are unwarranted and it only consented to a 22-day alternative extension if the Department agreed not to allow further comments by parties on the draft redetermination results.[115] Lumber Liquidators contends that the Department's request for yet more comments appears illusory considering the fact that parties have already submitted voluminous commentaries to the Department and the CIT on the calculation of the separate rate over the course of this appeal.[116]

Department Position:

Due to the tight deadlines established in this remand by the CIT, we were initially unable to grant the parties' full extension request and could grant parties only until 9:00 am Monday, May 5, 2014, for additional comments, as the remand was due to the CIT on Thursday, May 8, 2014. However, the CIT granted the Department an extension until May 30, 2014 to complete the final remand redetermination. When the CIT provided additional time to the Department for the final remand (*i.e.*, May 30, 2014), we also granted additional time for interested parties to file any additional comments until Monday, May 12, 2014. Changzhou Hawd, Jisen Wood, Dexin Wood, Huilong, Yingyi-Nature, and Karly Wood and Lumber Liquidators filed additional comments on May 12, 2014, as did other interested parties. Therefore, with the CIT's extension, we were able to grant additional time to the interested parties to file additional comments.

IV. FINAL RESULTS OF REDETERMINATION

Following the CIT's directive, the Department reconsidered the margin applied to the separate rate respondents, and assigned Fine Furniture; Dunhua City Jisen Wood Industry Co., Ltd.; Dunhua City Dexin Wood Industry Co., Ltd.; Dalian Huilong Wooden Products Co.;

[115] *See* Lumber Liquidators May 12 Remand Comments at 2.
[116] *Id.*

Kunshan Yingyi-Nature Wood Industry Co., Ltd.; Armstrong; and Karly Wood Product Limited above-*de minimis* margins for the reasons stated above. Also, for Changzhou Hawd, we issued our full questionnaire and intend to individually examine this company so that it will receive its own calculated cash deposit rate. The Department intends to issue a draft and final redetermination for Changzhou Hawd once the necessary information is collected and analyzed.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 MAY 2014
Date