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FINAL REMAND REDETERMINATION
Diamond Sawblades Manufacturers' Coalition v. United States
Court No. 17-00167, Slip Op. 18-146

Summary

The Department of Commerce (Commerce) has prepared these final results of remand redetermination in accordance with the October 23, 2018, order of the United States Court of International Trade (CIT) in *Diamond Sawblades Manufacturers' Coalition v. United States*, Court No. 17-00167, Slip Op. 18-146 (Ct. Int'l Trade Oct. 23, 2018) (*Remand Order* or *Diamond Sawblades Manufacturers' Coalition*). The litigation involves challenges to our *Final Results*¹ in the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China) covering the period of review November 1, 2014, through October 31, 2015.

In its *Remand Order*, the CIT remanded the *Final Results* to Commerce to: (1) further clarify or reconsider Commerce's conclusion that Bosun Tools Co., Ltd. (Bosun) acted to the best of its ability in responding to Commerce's requests for information; and (2) further explain Commerce's selection of surrogate values for copper powder and copper iron clab.

As discussed in detail below, for these final results, Commerce has determined Bosun's dumping margin based entirely on the facts available with an adverse inference and assigned Bosun the adverse facts available (AFA) rate of 82.05 percent. Therefore, the issue regarding the surrogate value selection for copper powder and copper iron clab in calculating Bosun's

¹ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26912 (June 12, 2017) (*Final Results*).

dumping margin is moot. For the eligible non-selected respondents, we applied the rate for Bosun and the Jiangsu Fengtai Single Entity, the other mandatory respondent that also received an AFA rate of 82.05 percent in the *Final Results*.²

Background

Bosun Tools, Inc. (Bosun USA) and Pioneer Tools, Inc. (Pioneer USA) are Bosun's U.S. sales affiliates. Bosun USA and Pioneer USA sold to their U.S. customers diamond sawblades exported from China by Bosun and diamond sawblades exported from Thailand by Bosun Tools (Thailand) Co., Ltd. (Bosun Thailand). However, Bosun USA and Pioneer USA did not maintain the record of the country of origin of diamond sawblades exported from China by Bosun and diamond sawblades exported from Thailand by Bosun Thailand and sold in the United States. Instead, Bosun identified the country of origin using an alternative sales identification methodology, which includes a first-in-first-out (FIFO) methodology. We verified this methodology and, at the time, found it acceptable.³ The petitioner requested that we assign a rate based on AFA to Bosun for its failure to maintain a record of the country of origin.⁴ While Bosun did not maintain a record of the country of origin as would be our preference, we found, at the time, that Bosun acted to the best of its ability by providing the alternative sales identification methodology. We verified and accepted Bosun's alternative sales identification methodology and calculated a margin for Bosun.⁵

During the verification of Bosun's alternative sales identification methodology, we found errors in certain U.S. sales transactions that we examined. The petitioner requested that

² See *Final Results* and accompanying Issues and Decision Memorandum (I&D Memo) at Comment 1. In the *Final Results*, we treated Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Fengtai Sawing Industry Co., Ltd., as a single entity. *Id.* at 26913, n.5.

³ See the Bosun verification report dated May 17, 2017.

⁴ The petitioner is Diamond Sawblades Manufacturers' Coalition.

⁵ See *Final Results* and accompanying I&D Memo at Comment 3.

Commerce apply partial AFA based on these errors. However, Commerce found that these errors were isolated and did not necessarily implicate the overall reliability of Bosun's reported data.⁶

Commerce selected Thailand as the primary surrogate country⁷ and preliminarily valued copper powder and copper iron clab using the Thai average unit value (AUV) for Harmonized Tariff Schedule (HTS) subheading 7406.10. For the *Final Results*, the petitioner requested that we use the South African AUV for HTS subheading 7406.10 to value copper powder and copper iron clab. The petitioner argued that the Thai AUV is aberrationally low compared to the AUVs for the same HTS subheading from five other potential surrogate countries, including South Africa. We found that the petitioner did not substantiate its claim that the Thai AUV is aberrationally low and we continued to value copper powder and copper iron clab using the preliminary AUVs.⁸

CIT's Decision

The "Best of Its Ability" Standard

The CIT quoted *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) and stated that, in holding that the "best of its ability" standard of section 776(b) of the Tariff Act of 1930, as amended (the Act) inherently "requires that {interested parties} . . . take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable {party} should anticipate being called upon to produce," appellate precedent has interpreted that statute to require potential future respondents to anticipate the information that would be necessary in future proceedings and acquire and maintain information

⁶ See *Final Results* and accompanying I&D Memo at Comments 4 and 5.

⁷ See, e.g., *Final Results* and accompanying I&D Memo at 3.

⁸ See, e.g., *Final Results* and accompanying I&D Memo at Comment 13.

accordingly.⁹ The CIT held that, in this review, it is unclear whether Commerce concluded that Bosun acted to the best of its ability, based on Bosun's responses to Commerce's requests for information or on the basis of Bosun's overall conduct before and during the review. The CIT continued, stating that either instance would appear to be at odds with appellate precedent on the meaning of the "best of its ability" standard and the facts on the record and, therefore, remand at least for clarification, or reconsideration if Commerce deems that appropriate, is necessary.¹⁰

The CIT found that Commerce recognized that "the best of its ability" standard does not require perfection, but held that Commerce appeared to have elided over the fact that Bosun has been individually examined in the investigation and two prior reviews. The CIT held that Commerce also appears to have elided over Bosun's awareness of the necessity of country of origin information as an aspect of these proceedings. The CIT also found that Bosun's statement to Commerce that the country of origin data were not necessary to be recorded in its computer system for business operations is odd, given that accurate identification of the country of origin is necessary to distinguish U.S. sales of subject merchandise and to determine accurate dumping margins.¹¹

Citing *Peer Bearing Co.-Changshan v. United States*, 766 F.3d 1396, 1400 (Fed. Cir. 2014), and *Nippon Steel*, 337 F.2d at 1382, the CIT held that, notwithstanding Bosun's alternative FIFO methodology, "the best of its ability" standard requires the respondent to do the maximum it can, inclusive of maintaining full and complete records of relevant data. The CIT stated that the country of origin is among the most basic data necessary for the margin calculation and an experienced respondent would reasonably foresee the need to maintain it.¹²

⁹ See *Diamond Sawblades Manufacturers' Coalition*, slip op.18-164, at 8-9.

¹⁰ *Id.* at 9.

¹¹ *Id.*

¹² *Id.* at 10-11.

The CIT explained that Bosun apparently did not maintain the country of origin information that had been in its possession and, while Bosun may have been frank regarding its failure to do so, the CIT did not understand how such frankness transforms a recordkeeping insufficiency into compliance with “the best of its ability” standard. The CIT explained that, as the appellate court has indicated in *Nippon Steel*, 337 F.3d at 1382, the standard applies to not only malfeasant conduct but also to inattentiveness, carelessness, or inadequate recordkeeping. The CIT stated that Bosun’s FIFO methodology would not have been necessary, had it maintained full and complete records of the origin of diamond sawblades sold in the United States in the first place.¹³

The CIT held that Commerce’s standard applied in this review appeared to be inconsistent with Commerce’s standard in other cases, but Commerce did not explain how its conclusion comported with judicial articulation of “the best of its ability” standard, or, alternatively, how it can lawfully apply a relaxed standard that does not require a respondent to maintain full and complete records of relevant data. Citing *Motor Vehicle Mfrs. Ass’n v. United States*, 463 U.S. at 57 (1983), and *SKF USA, Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2011), the CIT explained that agency actions are arbitrary when insufficient reasons are offered for treating similar situations differently.¹⁴

The CIT held that, to the extent Commerce found that Bosun was not inattentive, careless, or inadequate by failing to track and maintain the country of origin information, that finding is a conclusion, not an explanation. The CIT stated that, while Commerce found Bosun’s alternative FIFO methodology as a substitute met the “best of its ability” standard, the agency had indicated that, in future reviews, it expected that Bosun should record the country of origin

¹³ *Id.*

¹⁴ *Id.*

data at the time of sale. To the CIT, this “would seem to contradict finding that Bosun had, in fact, acted to the best of its ability.”¹⁵

The CIT held that, even under section 782(d) of the Act, which requires Commerce to provide an opportunity to correct deficient responses, Commerce did not explain why it found Bosun acted to the best of its ability overall. According to the CIT, the finding has yet to be explained in a manner that is reasonably grounded in the requirements of “the best of its ability” standard, as articulated by the courts in, *e.g.*, *Peer Bearing Co.*, 766 F.3d at 1400, quoting *Nippon Steel*, 337 F.3d at 1382.¹⁶

Finally, the CIT explained that, even under section 782(e) of the Act, which requires Commerce to use deficient data if they satisfy all statutory criteria under this section, Commerce did not acknowledge “the best of its ability” standard in this section. Thus, according to the CIT, it does not explain why Commerce determined that Bosun acted to the best of its ability for purposes of section 776(a)-(b) of the Act, despite failing to maintain direct origin data that was, or had been, within its possession. Citing *Nippon Steel*, 337 F.3d at 1382, the CIT held that Commerce did not explain why Bosun acted to the best of its ability under both sections 776(a)-(b) and 782(e) of the Act and Commerce did not explain how Bosun’s efforts to compensate for a lack of recordkeeping satisfies a standard that is fundamentally concerned with a respondent’s duty to keep and maintain full and complete records.¹⁷

Commerce’s Conclusion on the Reliability of Bosun’s Data

The CIT held that section 782(e) of the Act premises the use of nonstandard data on a respondent’s compliance with “the best of its ability” standard. Accordingly, the CIT stated that,

¹⁵ *Id.* at 11-12.

¹⁶ *Id.* at 13.

¹⁷ *Id.* at 13-14.

to conclude that a respondent acted to the best of its ability because its data complies with section 782(e) of the Act is akin to concluding that it acted to the best of its ability because it acted to the best of its ability. The CIT held that such a tautology does not rise to the level of a satisfactory explanation for agency action including a rational connection between the facts found and the choices made.¹⁸

According to the CIT, “Commerce identified a mistake in Bosun’s application of its FIFO methodology, which affected one out of the three or four sales traces for which Commerce reviewed the FIFO methodology.”¹⁹ The CIT held that, given a maximum sample size of four sales traces, Commerce’s conclusion that the error was isolated and did not affect other sales is not sufficiently explained. The CIT stated that the verification report is not ideally clear with respect to the quantum of Bosun’s sales for which origin was determined pursuant to the FIFO step, but it does indicate that the agency reviewed the FIFO step’s application to three or four transactions and found an error in one of the transactions reviewed, *i.e.*, an error effecting 25 percent to 33 percent of reviewed transactions. As such, according to the CIT, even if the FIFO step was applied only in the last resort, Commerce has yet to explain its conclusion that the error discovered at verification was not replicated in other sales, which were not reviewed at verification, to which the FIFO step applied. Further, the CIT stated, because Bosun was unable to explain how the error was made, the particularities of the error do not themselves suggest that the error was limited to this single sales trace.²⁰

The CIT found that Commerce’s explanation for concluding that errors in reporting physical characteristics were not widespread is similarly insufficient. The CIT found that the

¹⁸ *Id.* at 15-16.

¹⁹ *Id.* at 16.

²⁰ *Id.* at 16-17.

errors affected three out of sixteen transactions identified at verification and related to multiple product characteristics and these errors were not limited to Bosun’s reporting of a single model of merchandise. Similarly, the CIT held, Commerce’s conclusion that errors identified in Bosun’s reporting at verification did not indicate Bosun’s failure to act to the best of its ability is insufficiently explained. The CIT explained that section 782(e) of the Act requires “the best of its ability” standard, such that mere reference to the statute does not logically or adequately support Commerce’s conclusion. The CIT held further that, while Commerce downplayed the errors identified at verification, those errors affect a substantial percentage of the sample transactions reviewed at verification, and Commerce has not pointed to anything unique about the reviewed samples that would suggest such errors were limited to those samples.²¹

Surrogate Value for Copper Powder and Copper Iron Clab

The CIT held that Commerce did not adequately address the petitioner’s argument that the Thai AUV is an outlier. Without addressing this argument, according to the CIT, the regulatory preference for relying on data from the primary surrogate country is insufficient. The CIT explained that this regulatory preference is justified when other data available for comparison are seen to be fairly equal.²²

Separate Rate for Non-Selected Respondents

The CIT remanded the separate rate for non-selected respondents for further consideration in light of the other remanded issues.²³

²¹ *Id.*

²² *Id.* at 24-26.

²³ *Id.* at 26.

Discussion

Bosun

We agree with the CIT that the statute allows Commerce to rely on adverse inferences in selecting from among the facts available, where a respondent has failed to cooperate to the best of its ability.²⁴ We also agree that the AFA provision in the statute does not condone inadequate record-keeping.²⁵ We have reexamined the state of the record, as well as Bosun’s cooperation in this review, in light of the *Remand Order*, particularly the CIT’s finding that Commerce’s conclusion that Bosun met the “best of its ability” standard “would appear to be at odds with appellate precedent on the meaning of the ‘best of its ability’ standard and the facts on the record”²⁶

In reexamining this issue, we find that necessary information relating to the country of origin of Bosun’s merchandise is not available on the record, within the meaning of section 776(a)(1) of the Act. By not maintaining records of the country of origin of its merchandise, despite its ability to do so, we also find that Bosun has failed to provide requested information in the form and manner requested and has significantly impeded the proceeding, pursuant to section 776(a)(2)(B)-(C) of the Act. Furthermore, we find the information that Bosun did submit is unreliable, based on certain reporting errors discovered at verification, and, therefore, find that Bosun’s information cannot be verified, pursuant to section 776(a)(2)(D) of the Act. We, therefore, find it necessary to resort to the facts otherwise available, pursuant to section 776(a)(1) and (a)(2)(B)-(D) of the Act.

²⁴ See section 776(b) of the Act.

²⁵ See, e.g., *Peer Bearing Co.-Changshan*, 766 F.3d at 1400, and *Nippon Steel*, 337 F.2d at 1382.

²⁶ See *Diamond Sawblades Manufacturers’ Coalition*, slip op.18-164, at 9.

Furthermore, we find that Bosun has failed to maintain full and complete records regarding country of origin, despite its apparent ability to do so, and, as such, we find that Bosun has failed to cooperate to the best of its ability within the meaning of section 776(b) of the Act and that an adverse inference is warranted in selecting from the facts otherwise available. In particular, upon reexamination of the record, we find that Bosun should have been aware of the need for distinguishing the country of origin of its merchandise for export. The verification report notes that Bosun had the merchandise marked with country of origin at the time it was shipped to its facility.²⁷ We find that this means that Bosun had the ability to maintain country of origin information, but failed to do so for this review. Bosun, by not maintaining this information, has not cooperated to the “best of its ability,” because the standard “does not condone inattentiveness, carelessness, or inadequate record keeping.”²⁸ While Bosun responded to our requests for information during the administrative review and attempted to supply an alternative methodology, we agree with the CIT’s analysis that “Bosun’s origin identification methodology would not have been necessary had it ‘maintained full and complete records’ of the origin of the sawblades sold in the United States in the first place.”²⁹ Again, as noted above, evidence on the record of this review indicates that Bosun had the ability to maintain such records, but failed to do so. Moreover, having been individually examined in the original investigation, as well as the third and fourth administrative reviews,³⁰ Bosun is familiar with Commerce’s antidumping duty proceedings and should have understood the importance of maintaining adequate country of origin information. The ability to determine the country of

²⁷ See the Bosun verification report dated May 17, 2017, at 4.

²⁸ See *Nippon Steel*, 337 F.3d at 1382.

²⁹ See *Diamond Sawblades Manufacturers’ Coalition*, slip op.18-164, at 10 (quoting *Peer Bearing Co.-Changshan*, 766 F.3d at 1400).

³⁰ See *Final Results* and accompanying I&D Memo at 27, 54.

origin of a respondent's export sales is core to Commerce's ability to calculate a respondent's dumping margin. For this reason, we are unable to rely on Bosun's data to calculate a dumping margin.

Next, we find that section 782(e) of the Act is inapplicable here. The CIT held that "among {section 782(e)}'s pre-requisites is that the respondent demonstrate that it 'acted to the best of its ability.'"³¹ Therefore, because we find that Bosun failed to cooperate to the best of its ability under section 776(b) of the Act for the reasons discussed above, we find that section 782(e)(4) of the Act is not satisfied.

Our decision not to rely on Bosun's data is also consistent with section 782(d) of the Act. Section 782(d) of the Act requires that Commerce promptly inform a submitting party of deficiencies in a submission and provide an opportunity to remedy the submission to the extent practicable. Under section 782(d) of the Act, if a party submits further information in response to such deficiency and Commerce determines the response is not satisfactory, Commerce may disregard all or part of the original and subsequent responses. However, section 782(d) of the Act is inapplicable when extensive reporting errors are discovered for the first time at verification.³²

As the CIT observed,³³ and as we explained in the *Final Results*, because of deficiencies in Bosun's explanation of its methodology for determining the country of origin of its sales, we issued two supplemental questionnaires requesting Bosun to explain in more detail its sales

³¹ See *Diamond Sawblades Manufacturers' Coalition*, slip op.18-164, at 14; see also *NSK Ltd. v. United States*, 481 F.3d 1355, 1360 n.1 (Fed. Cir. 2007) (finding that, because a respondent failed to satisfy the best of its ability standard under section 776(b) of the Act, the respondent also failed to satisfy the best of its ability standard under section 782(e) of the Act).

³² See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 33396 (June 12, 2008), and accompanying I&D Memo at Comment 1.

³³ See *Diamond Sawblades Manufacturers' Coalition*, slip op.18-164, at 13.

identification methodology.³⁴ Although we explained in the *Final Results* that Bosun responded to our requests for information in a timely manner and explained its alternative methodology,³⁵ we have reconsidered the state of the record. We now find that Bosun’s alternative methodology, as reported, was “not satisfactory,” within the meaning of section 782(d)(1) of the Act, because Bosun failed to maintain adequate records of the country of origin of its products. As the CIT highlighted in the *Remand Order*, “Commerce identified a mistake in Bosun’s application of its FIFO methodology, which affected one out of the three or four sales traces for which Commerce reviewed the FIFO methodology at verification.”³⁶ Given that the sample sales traces at verification comprised a small number of transactions altogether, we cannot be confident that there were no other errors with Bosun’s methodology, even if we were to accept it.³⁷ Moreover, as discussed above, the facts uncovered at verification indicated that Bosun had the merchandise marked with country of origin at its facility.³⁸ For this reason, we now find that, based on our verification process, Bosun’s supplemental responses explaining the FIFO methodology were not satisfactory, because Bosun could have maintained adequate country of origin information for its products in the first place.

As discussed above, we find it inappropriate to rely on Bosun’s sales identification methodology and, therefore, we have no reliable information on the country of origin of Bosun’s sales. Because this information is fundamental to the calculation of Bosun’s margin, we find that resort to total AFA is appropriate for this final remand redetermination.

³⁴ See *Final Results* and accompanying I&D Memo at Comment 3.

³⁵ *Id.*

³⁶ See *Diamond Sawblades Manufacturers’ Coalition*, slip op.18-164, at 16.

³⁷ Moreover, the CIT observed that Bosun’s errors in reporting physical characteristics “affected three out of sixteen transactions identified at verification, and related to multiple product characteristics,” which we find further supports our determination not to rely on Bosun’s information. *Id.* at 17.

³⁸ See the Bosun verification report dated May 17, 2017, at 4.

For these reasons, we are determining Bosun’s rate based entirely on AFA. The AFA rate we are applying to Bosun is the same AFA rate that we applied to the Jiangsu Fengtai Single Entity, *i.e.*, 82.05 percent. In the *Final Results*, we explained that this AFA rate is the highest margin applied in a previous segment of this proceeding and, thus, does not need to be corroborated.³⁹ Because we will determine Bosun’s rate based on the total AFA rate, all other issues pertaining to the calculation of Bosun’s margin in this final remand redetermination, particularly the surrogate value for copper powder and copper iron clab, are moot.

Non-Selected Separate Rate Respondents

In the underlying administrative review, Bosun and the Jiangsu Fengtai Single Entity were individually examined respondents. For the *Final Results*, we applied an AFA rate to the Jiangsu Fengtai Single Entity for its failure to cooperate to the best of its ability.⁴⁰

The statute and Commerce’s regulations do not address the establishment of a rate to be applied to individual companies not selected for examination in a non-market economy administrative review, but that are entitled to a separate rate, when Commerce limits its examination in an administrative review, pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review.⁴¹ Section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use “any reasonable method” for assigning the rate to all other respondents, “including averaging the estimated weighted average dumping margins determined for the exporters and producers individually

³⁹ See *Final Results* and accompanying I&D Memo at Comment 1; section 776(c)(2) of the Act.

⁴⁰ See *Final Results* and accompanying I&D Memo at Comment 1.

⁴¹ See *Final Results* and accompanying I&D Memo at 4.

examined.” The Statement of Administrative Action provides that, in such situations, the expected method is to weight-average the zero and *de minimis* margins and the margins determined pursuant to the facts available, unless doing so is not feasible or would not be reasonably reflective of potential dumping margins.⁴² The United States Court of Appeals for the Federal Circuit (CAFC) further clarified in *Albemarle Corp. v. United States* that Congress has spoken directly to this precise situation in section 735(c)(5)(B) of the Act, and the SAA unambiguously provides that the expected method to calculate the separate rate when all individually examined respondents are assigned *de minimis* margins is to average the individually examined respondents *de minimis* margins.⁴³ Although *Albemarle Corp.* addressed a case where all individually examined respondents had *de minimis* margins, neither the Act nor the SAA makes a distinction between margins that are zero, *de minimis*, or based on the facts available when describing the expected method.⁴⁴

Accordingly, in this final remand redetermination, we have followed the expected method as contemplated by the SAA and *Albemarle Corp.* and used the rate applied to the mandatory respondents as the rate for the non-selected companies. In this final remand redetermination, the rate for Bosun and the Jiangsu Fengtai Single Entity are the only rates available for individually examined respondents. Therefore, we assigned the rates for these two companies, *i.e.*, 82.05 percent, to the non-selected respondents eligible for a separate rate.

⁴² See Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Rep. No. 103-316, at 873 (1994) (SAA).

⁴³ See *Albemarle Corp. v. United States*, 821 F.3d 1345, 1354 (Fed. Cir. 2016).

⁴⁴ See SAA at 873 (“{I}f the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis* ... {t}he expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available.”).

Comments

On March 26, 2019, we released our draft remand redetermination to interested parties for comment. On April 5, 2019, we received comments from the petitioner in support of our draft remand redetermination.⁴⁵ Also on April 5, 2019, we received comments from Bosun on the draft remand redetermination.⁴⁶ Below, we respond to Bosun's arguments.

Issue: Whether to Continue to Apply AFA to Bosun

Bosun argues that record evidence does not support Commerce's reversal of the *Final Results* to find in the draft remand redetermination that Bosun's data are unreliable and that Bosun did not cooperate to the best of its ability. Bosun requests that Commerce re-examine the facts of the record and find Bosun's U.S. sales records reliable. Bosun explains that the CIT was not as familiar with the administrative record as Commerce was and, thus, asked Commerce for clarity with respect to the *Final Results*. Bosun contends that Commerce's verification report and well-reasoned and evidence-based *Final Results* provide that clarity.

Bosun argues that Commerce may rely on facts available under section 776(a) of the Act, and use an adverse inference under section 776(b) of the Act, when it also finds that the respondent failed to cooperate by not acting to the best of its ability with a request for information. Bosun claims that the CAFC has held in *Nippon Steel* that the "best of its ability" standard does not require perfection and the cooperation to the maximum level the respondent is able to do satisfies this standard. Bosun contends that the draft remand redetermination is arbitrary and capricious because it is not based on any of the detailed data on the record, which Commerce described, in detail, in the verification report and in the *Final Results*. Bosun argues

⁴⁵ See the petitioner's comments dated April 5, 2019.

⁴⁶ See Bosun's comments dated April 5, 2019.

that the draft remand redetermination is void of any real attempt to explain how its initial detailed findings now compel the opposite result.

Bosun explains that its alternative sales identification methodology first relied on the product codes and the year of the shipments and then on the product codes with matching unit purchase prices to identify the country of origin before resorting to the FIFO methodology for the remaining U.S. sales for which the country of origin was not identified. Bosun notes that neither the CIT nor Commerce question these methods in determining the country of origin. According to Bosun, the sole method at issue is the FIFO methodology. Bosun explains that, during the verification, Commerce extensively replicated and tested Bosun's alternative sales identification methodology, which includes the FIFO methodology used as the last step. According to Bosun, the FIFO methodology identified only less than 2.5 percent of the total U.S. sales quantity. Bosun states that Commerce found only one error in the FIFO methodology for a very small number of diamond sawblades. Bosun argues that, by any measure, this error is inconsequential, as it covers only 0.144 percent of the total U.S. sales transactions of diamond sawblades and less than 0.00025 percent of the total pieces of diamond sawblades.

Bosun claims that it relied on its records to determine the country of origin, which Commerce verified and found no discrepancies. Bosun argues that, for more than 97.5 percent of Bosun's sales, there is no potentially missing information from the record whatsoever, and Commerce cannot lawfully apply AFA or even facts available with respect to those sales. As such, according to Bosun, it is completely inconsequential that Bosun did not maintain the country of origin information in its U.S. sales documents or U.S. computer system. Bosun explains that its FIFO methodology is based on its record and accounts for less than 2.5 percent of Bosun's total U.S. sales. Bosun also explains that its use of the FIFO methodology is

consistent with its business practice of selling earlier purchased products first to avoid holding aging inventory that is more likely to be devalued.

Bosun argues that the FIFO methodology is not absolute, but reasonable, and perhaps most reasonable with the available record. Bosun claims that Commerce did not suggest an alternative way to identify country of origin for less than 2.5 percent of Bosun's sales identified by the FIFO methodology. Bosun reiterates that it recorded the product codes and unit costs to identify the country of origin for most of sales and further applied the FIFO methodology to segregate the extremely small percentage of products that could not be properly segregated by the earlier steps. Bosun contends that Commerce made no analysis and explanation on how, with the same facts and record, it reversed the *Final Results*.

Bosun reiterates that its databases are reliable overall and should be relied upon in this final remand redetermination. Bosun argues that the draft remand redetermination did not explain why Bosun's U.S. sales were unreliable, except a conclusory sentence that verification discovered certain mistakes. Bosun claims that two minor errors Commerce found in the verification – one error with the FIFO methodology and another unrelated product code error in two product matching control numbers (CONNUMs) – are isolated and inconsequential, to say that Bosun failed the statutory criteria in section 782(e) of the Act. Bosun also claims that it did not fail the section 782(e) analysis in any other ways. Bosun reiterates that the error involving one U.S. sales transaction for which the country of origin was identified using the FIFO methodology is just one error solely related to the FIFO methodology and there was no other error found in the verification of the alternative sales methodology. Bosun states that this error involved only an extremely small number of pieces of diamond sawblades in one sales transaction.

Bosun disagrees with the CIT's characterization of the CONNUM misreporting in the *Remand Order*. Bosun calls the CIT's characterization factually incorrect. Bosun states that the CONNUM mistakes are minor and isolated and do not compromise Bosun's database or affect Bosun's margin. Bosun explains that its misreported CONNUMs are limited with no widespread effect to other CONNUMs, or to the factors of production (FOP) database, and the correction of Bosun's misreported CONNUMs did not merge into any existing CONNUMs. Bosun argues that minor mistakes with CONNUMs are not unusual. According to Bosun, Commerce did not apply AFA to its respondent in other cases where Commerce found CONNUM errors in verifications.⁴⁷ Bosun argues that the CIT stated that “{i}t is not the number of errors that is the determining factor, but the impact the errors have on the data” and that, in Bosun's case, the small number of CONNUM errors have no effect on the data or margin calculation at all.⁴⁸

Bosun argues that *Nippon Steel's* facts are entirely different. According to Bosun, in *Nippon Steel*, the respondent refused to provide the weight conversion factor that Commerce requested twice, and claimed that it did not have the weight conversion factor and Commerce did not need it. Bosun explains that, only after Commerce preliminarily applied AFA, the respondent obtained the weight conversion factor from its factories and reported it, but Commerce rejected it. Bosun contends that, in contrast, Bosun cooperated at all times and explained the records it actually maintained. Bosun claims that, unlike *Nippon Steel*, Bosun took arduous and diligent steps to remedy the initial recordkeeping gap by a logical and verifiable progression of tests it performed on its data that led to the discernment and designation of the

⁴⁷ See Bosun's comments dated April 5, 2018, at 13-14, citing, e.g., *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 69644 (November 10, 2015), and *Certain Uncoated Paper from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 3115 (January 20, 2016).

⁴⁸ See Bosun's comments dated April 5, 2018, at 13, quoting *Krupp Thyssen Nirosta v. United States*, 25 CIT 793, 800-01 (2001).

country of origin.

Bosun claims that the *Nippon Steel* court never created an artificial construct that attentiveness to recordkeeping and efforts in the course of the review were two unrelated pass/fail tests for a respondent. Rather, according to Bosun, the *Nippon Steel* court viewed the matter holistically, finding that the record could be expected to have been maintained but, also, that the respondent repeatedly failed to correctly identify the missing information that, in fact, was not missing to Commerce. Bosun contends that the draft remand redetermination is unreasonable, to the extent that it pulls apart the efforts and discounts the cooperation once it finds that a single type of record was not kept. Bosun asserts that Commerce's application of AFA must be supported by the record evidence as a whole and the AFA statute exists to induce cooperation, not to dissuade or punish cooperation. Bosun argues that the application of the neutral FIFO methodology to the remaining less than 2.5 percent of the U.S. sales in no way can be characterized as enabling Bosun to obtain a more favorable result than if it had somehow cooperated more fully.

Bosun argues that *NSK Ltd.* is also inapplicable to Bosun. According to Bosun, *NSK Ltd.* is a case where the CAFC upheld Commerce's application of AFA to a respondent that refused to provide the weight data that it had and failed to substantiate its expense allocation. Bosun explains that Commerce requested respondent NTN Corporation (NTN) to allocate freight expenses based on weight, but NTN allocated freight expenses based on sales value. Bosun explains further that Commerce requested NTN to provide the weight of each ball bearing model, but it refused, saying that it did not maintain the weight record. Bosun contends that, unlike NTN in *NSK Ltd.*, Commerce did not find Bosun's alternative sales identification

methodology unsatisfactory and Commerce did not ask Bosun to identify the country of origin using another method.

Bosun states that *Nippon Steel* and *NSK Ltd.* laid out an underlying principle of when Commerce can apply partial AFA – when necessary information is missing from the record and the respondent did not act to the best of its ability to supply an alternative to Commerce’s satisfaction to make up for the missing information. According to Bosun, in the draft remand redetermination, Commerce used a very small amount of missing or misreported information as a premise upon which to apply total AFA. Bosun contends that applying AFA for simply not maintaining the country of origin makes it unnecessary to issue supplemental questionnaires because, in both *Nippon Steel* and *NSK Ltd.*, Commerce could simply apply total AFA without issuing a supplemental questionnaire. Bosun asserts that the assessment of whether a respondent cooperated to the best of its ability should take into account the respondent’s efforts throughout the process, and not disproportionately focus on what the respondent could have done better before the administrative review. Bosun claims that, if Commerce limited its assessment to recordkeeping in a respondent’s normal business before the administrative review, then no respondent who is aware of its defect in recordkeeping would cooperate because, regardless of efforts such respondent put forth, it will only receive total AFA. Bosun contends that the application of AFA to a company for not maintaining a perfect record would render the AFA statute entirely superfluous, because whether the company cooperated to the best of its ability is irrelevant once the company did not maintain perfect recordkeeping for 100 percent of its database. Quite the contrary, Bosun argues, Commerce should instead effectuate the statutory purposes of the AFA rule to induce and encourage respondents to cooperate.

Bosun argues that AFA is unwarranted, because it has complied with Commerce's requests to the best of its ability. Bosun contends that applying total AFA based on finding that Bosun failed to maintain full and complete records of country of origin and, thus, failed to cooperate to the best of its ability, is not based on a balanced reading of the court decision, record facts, established case precedents, and Congressional intent behind the AFA provision. Bosun explains that Commerce selected Bosun for individual examination only after Commerce rescinded the administrative review, in part, with respect to one of the first two selected respondents, and that Bosun did not expect that it would be selected for individual examination. After being selected for individual examination, Bosun claims, it cooperated to the best of its ability with the information that it had. Bosun explains that, in the first four administrative reviews, it received margins ranging from zero percent to 12.05 percent. Bosun claims that assigning the China-wide rate of 82.05 percent as the AFA rate is excessive and punitive, contrary to the binding court precedents, when Bosun is not a part of the China-wide entity.

Commerce's Position: We disagree with Bosun and continue to find that our remand redetermination complies with the *Remand Order*. As explained above, the AFA provision in the statute does not condone inadequate record-keeping. We agree with the CIT's observation that "appellate precedent has explicitly interpreted {section 776(b) of the Act} to require potential interested parties to a future administrative proceeding to anticipate the information that would be necessary thereto and conduct their information acquisition and maintenance accordingly."⁴⁹ Accordingly, we agree that Bosun should have been aware of the need for distinguishing the country of origin of the merchandise for export. As the CIT highlighted in the *Remand Order*, "accurate identification of the country of origin is unquestionably necessary to

⁴⁹ See *Diamond Sawblades Manufacturers' Coalition*, slip op.18-164, at 9.

distinguishing U.S. sales of subject merchandise and to determining accurate duty margins.”⁵⁰ Bosun, by not keeping this information, did not act to the “best of its ability.” While Bosun complied with our requests during the course of the review itself, it failed to demonstrate that it acted to the best of its ability in maintaining the necessary information and meeting the requirements of an administrative review. As the CIT stated, “{o}rigin information is among the most basic data necessary for the calculation of a margin, and an experienced respondent would reasonably foresee the need to maintain it.”⁵¹

Bosun’s expectation that it would not be selected for individual examination is not a valid excuse for poor or improper recordkeeping. In the underlying administrative review, Husqvarna (Hebei) Co., Ltd. (Husqvarna) was one of the two respondents initially selected for individual examination.⁵² After we rescinded the underlying administrative review, in part, with respect to Husqvarna,⁵³ we selected Bosun to replace Husqvarna for individual examination.⁵⁴ When we selected Husqvarna for individual examination in the underlying administrative review, Bosun should have foreseen that it may replace Husqvarna as a mandatory respondent, given that it is not unusual for mandatory respondents to be rescinded in administrative reviews and given that Bosun was next in line to be selected for individual examination in this review. In particular, within and just after the period of review, and just before the initiation of the underlying administrative review, we rescinded two prior administrative reviews, in part, with respect to

⁵⁰ *Id.*

⁵¹ *Id.* at 11.

⁵² See the Memorandum, “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Selection of Respondents for Individual Examination,” dated February 5, 2016.

⁵³ See *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Rescission of Antidumping Duty Administrative Review in Part; 2014-2015*, 81 FR 23676 (April 22, 2016).

⁵⁴ See the Memorandum, “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Selection of an Additional Respondent for Individual Examination in the 2014-2015 Antidumping Duty Administrative Review,” dated April 27, 2016 (Second Respondent Selection Memo).

Husqvarna.⁵⁵ In the underlying administrative review, Bosun was the next largest exporter by volume of the subject merchandise entered into the United States.⁵⁶ Therefore, with the partial rescission of the two prior administrative reviews with respect to Husqvarna, Bosun could reasonably have foreseen that it may be selected for individual examination in the underlying administrative review. Regardless, a respondent's self-determined expectation that it will not be selected for individual examination is not a valid reason for failing to maintain necessary information.

Commerce requested information on Bosun's U.S. sales of subject merchandise, the reporting of which requires information identifying the country of origin of the subject merchandise. Despite our supplemental questionnaires on the issue of the identification of U.S. sales, Bosun's failure to maintain this information left it unable to identify U.S. sales without resorting to an alternative identification methodology. We agree with the CIT's characterization of Bosun's sales identification methodology as an "after-the-fact, indirect methodology,"⁵⁷ and, therefore, find that by relying on this methodology, Bosun has failed to provide information in the form or manner requested. Moreover, Bosun's need to resort to this alternative methodology undermines Bosun's argument that AFA is unwarranted because there is no information missing from the record. The missing information is the direct country-of-origin records for Bosun's U.S. sales. That Bosun may be able to deduce the country of origin for certain sales by relying

⁵⁵ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71980 (December 4, 2014), and accompanying Preliminary Decision Memorandum at 4-5, and *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75854 (December 4, 2015) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum at 2-3. The underlying administrative review was initiated on January 7, 2016. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 736 (January 7, 2016).

⁵⁶ See Second Respondent Selection Memo.

⁵⁷ See *Diamond Sawblades Manufacturers' Coalition*, slip op.18-164, at 12.

on other information (*e.g.*, product code, shipment year, unit cost) is not a substitute for the maintenance of that information in the first instance, particularly in light of the recordkeeping expectations for potential respondents.⁵⁸ Therefore, we find Bosun’s arguments pertaining to the portion of its sales subjected to the alternative FIFO methodology to be inapt.

We further agree with the CIT’s observation that, by indicating that in any further reviews Commerce would expect Bosun to record origin data at the time of sale, Commerce contradicted its finding that Bosun had acted to the best of its ability.⁵⁹ Instead, the expectation for this and future reviews is that respondents “maintain full and complete records documenting the information that a reasonable party should anticipate being called upon to produce.”⁶⁰ Because Bosun did not maintain such records, it falls short of this standard. Moreover, the error in reporting the quantity of the U.S. sale identified by the FIFO methodology indicates a possibility of more widespread errors in the alternative sales identification methodology, as the CIT pointed out in the *Remand Order*.⁶¹ Although Bosun argues that the errors identified at verification were minor and impacted a very small percentage of sales, we agree with the CIT’s statement that “verification is meant to spot-check the accuracy of a respondent’s prior-reported data.”⁶² Because Commerce did not review every one of Bosun’s transactions at verification, the record does not establish that the error identified was isolated, particularly in light of Bosun’s inability to explain how the error occurred.

⁵⁸ See *Nippon Steel*, 337 F.3d at 1382 (“While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or *inadequate record-keeping*”) (emphasis added).

⁵⁹ See *Diamond Sawblades Manufacturers’ Coalition*, slip op.18-164, at 12.

⁶⁰ *Id.* at 13, quoting *Peer Bearing*, 766 F.3 at 1400.

⁶¹ *Id.* at 16.

⁶² *Id.*

Regarding Bosun’s argument that applying AFA to an otherwise cooperative respondent who fails to maintain perfect records would be contrary to the cooperation-inducement purpose of AFA, we disagree. The purpose here is to induce adequate recordkeeping for Commerce to carry out its review. As such, Commerce’s application of AFA is consistent with the statute’s intent.⁶³

Because Bosun failed to cooperate to the best of its ability under section 776(b) of the Act, we also find Bosun has failed to satisfy the criteria for use of its information under section 782(e) of the Act. Specifically, section 782(e)(4) of the Act provides that Commerce will not decline to consider information submitted by an interested party if, *inter alia*, “the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by {Commerce} with respect to the information{.}” This is consistent with the *Remand Order*, which states that section 782(e) of the Act “premises the use of nonstandard data on a respondent’s compliance with the ‘best of its ability’ standard.”⁶⁴

Whether Bosun received low rates in previous reviews is immaterial in this case, because Bosun failed to cooperate to the best of its ability in the underlying administrative review. In the *Final Results*, we assigned the highest margin applied in a separate segment of this proceeding to the Jiangsu Fengtai Single Entity as AFA, *i.e.*, 82.05 percent.⁶⁵ Our assignment of 82.05 percent to Bosun as AFA is consistent our assignment of the AFA rate to the Jiangsu Fengtai Single Entity in the *Final Results*, as well as sections 776(c)(2) and (d) of the Act, as this rate has been applied in prior segments of the order on diamond sawblades from China.⁶⁶ Therefore, Bosun’s

⁶³ See SAA at 870.

⁶⁴ See *Diamond Sawblades Manufacturers’ Coalition*, slip op.18-164, at 15-16.

⁶⁵ See *Final Results* and accompanying I&D Memo at Comment 1.

⁶⁶ See, *e.g.*, *Diamond Sawblades and Parts Thereof from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015), and accompanying I&D Memo at Comment 3.

argument that applying to it a rate equal to the China-wide rate is overly punitive fails, because our selection of the rate is consistent with the express authority to select such a rate under the Act.

Final Results of Redetermination

Pursuant to the *Remand Order*, we have reconsidered our determination as described above. For the final remand redetermination, we determined that Bosun failed to cooperate to the best of its ability and applied an AFA rate to Bosun, *i.e.*, 82.05 percent. All other issues pertaining to Bosun are moot. Consistent with *Albemarle Corp.*, we applied the rate determined for Bosun and the Jiangsu Fengtai Single Entity as the separate rate to eligible non-selected respondents. The rates determined in this final second remand redetermination are as follows:

<u>Company</u>	<u>Final Results Margin (Percent)</u>	<u>Remand Margin (Percent)</u>
Bosun Tools Co., Ltd.	6.19	82.05
Chengdu Huifeng Diamond Tools Co., Ltd.	6.19	82.05
Danyang Hantronic Import & Export Co., Ltd.	6.19	82.05
Danyang Huachang Diamond Tools Manufacturing Co., Ltd.	6.19	82.05
Danyang Like Tools Manufacturing Co., Ltd.	6.19	82.05
Danyang NYCL Tools Manufacturing Co., Ltd.	6.19	82.05
Danyang Weiwang Tools Manufacturing Co., Ltd.	6.19	82.05
Guilin Tebon Superhard Material Co., Ltd.	6.19	82.05
Hangzhou Deer King Industrial and Trading Co., Ltd.	6.19	82.05
Hangzhou Kingburg Import & Export Co., Ltd.	6.19	82.05
Huzhou Gu's Import & Export Co., Ltd.	6.19	82.05
Jiangsu Inter-China Group Corporation	6.19	82.05
Jiangsu Youhe Tool Manufacturer Co., Ltd.	6.19	82.05
Qingyuan Shangtai Diamond Tools Co., Ltd.	6.19	82.05
Quanzhou Zhongzhi Diamond Tool Co., Ltd.	6.19	82.05
Rizhao Hein Saw Co., Ltd.	6.19	82.05
Saint-Gobain Abrasives (Shanghai) Co., Ltd.	6.19	82.05
Shanghai Jingquan Industrial Trade Co., Ltd.	6.19	82.05
Sino Tools Co., Ltd.	6.19	82.05

Weihai Xiangguang Mechanical Industrial Co., Ltd.	6.19	82.05
Wuhan Wanbang Laser Diamond Tools Co., Ltd. ⁶⁷	6.19	82.05
Xiamen ZL Diamond Technology Co., Ltd.	6.19	82.05
Zhejiang Wanli Tools Group Co., Ltd.	6.19	82.05

4/17/2019

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Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁶⁷ Wuhan Wanbang Laser Diamond Tools Co., Ltd., is the successor-in-interest to Wuhan Wanbang Laser Diamond Tools Co. See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 81 FR 20618 (April 8, 2016).