

FINAL SECOND REMAND REDETERMINATION
Bosun Tools Co., Ltd., et al. v. United States
Consol. Court No. 18-00102, Slip Op. 20-97 (CIT July 14, 2020)

I. Summary

The Department of Commerce (Commerce) prepared these final results of second remand redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (CIT) issued on July 14, 2020, in *Bosun Tools Co., Ltd., et al. v. United States*, Consol. Court No. 18-00102, Slip Op. 20-97 (CIT July 14, 2020) (*Second Remand Order*). The litigation involves challenges to our *Final Results* 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, 2015 through October 31, 2016.¹

In the *Second Remand Order*, the CIT directed Commerce to either: (1) reconsider its earlier remand redetermination that declined to consider evidence suggesting that the separate rate for non-selected respondents is unreasonable; or (2) “explain why following the ‘expected method’ is reasonable in light of evidence of any margins assigned to the non-selected respondents and Bosun Tools Co., Ltd. (Bosun), when individually investigated in prior reviews.”²

We respectfully disagree with the CIT’s direction in the *Second Remand Order*.

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

² See *Second Remand Order* at 16-17.

Therefore, under respectful protest,³ and pursuant to the *Second Remand Order*, we have considered the rates determined for Bosun and the other separate rate companies in prior reviews to determine whether following the “expected method” results in a margin that is reasonably reflective of the non-selected respondents’ dumping.

II. Background

In the *Final Results*, the two mandatory respondents received a rate based on adverse facts available (AFA) and the non-selected separate rate respondents received a simple average of the rates for the two mandatory respondents, following the expected method to calculate the separate rate for non-selected respondents when all rates for the mandatory respondents were zero, *de minimis*, or based entirely on facts available, pursuant to the guidance in section 735(c)(5)(B) of the Act and consistent with *Albemarle Corp.*⁴ On March 9, 2020, following *Bosun Tools Co., Ltd., et al. v. United States*, 405 F. Supp. 3d 1359 (CIT 2019) (*First Remand Order*), Commerce issued its Final First Remand Redetermination,⁵ in which Commerce calculated: (1) an individual margin of zero percent for Chengdu Huifeng New Material Technology Co., Ltd. (Chengdu Huifeng);⁶ and (2) the separate rate for non-selected respondents by simple-averaging the calculated rate of zero percent for Chengdu Huifeng and the AFA rate of 82.05 percent for the other mandatory respondent, the Jiangsu Fengtai Single Entity.⁷ The simple-averaged separate rate for non-selected respondents was 41.03 percent.⁸ Commerce

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

⁴ See *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle Corp.*)

⁵ See Final First Remand Redetermination pursuant to *First Remand Order*, dated March 9, 2020, and available at <https://enforcement.trade.gov/remands/19-125.pdf> (Final First Remand Redetermination).

⁶ See *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 82 FR 60177 (December 19, 2017). In this changed circumstances review, Commerce determined that Chengdu Huifeng New Material Technology Co., Ltd. is the successor-in-interest to Chengdu Huifeng Diamond Tools Co., Ltd.

⁷ See Final First Remand Redetermination at 8, 14; see also *Final Results* IDM at Comment 2 for the AFA rate of 82.05 percent for the Jiangsu Fengtai Single Entity.

⁸ See Final First Remand Redetermination at 8.

explained that its simple-averaging of the mandatory respondents' rates to determine the separate rate for non-selected respondents is consistent with the expected method we used in the *Final Results*. Commerce assigned 41.03 percent to the following non-selected separate rate respondents:⁹

Bosun Tools Co., Ltd.

Danyang NYCL Tools Manufacturing Co., Ltd.

Danyang Weiwang Tools Manufacturing Co., Ltd.

Guilin Tebon Superhard Material Co., Ltd.

Hangzhou Deer King Industrial and Trading Co., Ltd.

Jiangsu Youhe Tool Manufacturer Co., Ltd.

Quanzhou Zhongzhi Diamond Tool Co., Ltd.

Rizhao Hein Saw Co., Ltd.

Zhejiang Wanli Tools Group Co., Ltd.

III. CIT's Decision

The CIT sustained our calculation of the individual margin of zero percent for Chengdu Huifeng.¹⁰ With respect to the separate rate for non-selected respondents, the CIT ordered a remand for further consideration. The CIT explained:

The Statement of Administrative Action elaborates that the “expected method{, }” in this scenario, is “to weight-average the zero and de minimis margins and margins determined pursuant to the facts available, provided that volume data is available.” Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, at 873 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4201.13 If the “expected method” is

⁹ *Id.* In the Final First Remand Redetermination, we inadvertently assigned the rate of 41.03 percent to Danyang Huachang Diamond Tools Manufacturing Co., Ltd. (Danyang Huachang), which is not one of the plaintiffs in this litigation. Therefore, the separate rate of 82.05 percent for Danyang Huachang in the *Final Results* is final and conclusive. See, e.g., *China Manufacturers Alliance, LLC v. United States*, 205 F.Supp.3d 1325, 1343-44 (CIT 2017) (“... that decision is unchallenged in this litigation and, therefore, final and conclusive. As a result, any prospect of {calculation change} is foreclosed as beyond the scope of this litigation.”). Accordingly, we excluded Danyang Huachang from this final second remand redetermination.

¹⁰ See *Second Remand Order* at 10.

“not feasible” or the method “results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers,” Commerce may, instead, “use other reasonable methods.” *Id.* Commerce’s determination must be supported by substantial evidence. *See Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345, 1353 (Fed. Cir. 2016) (explaining that “Commerce must find based on substantial evidence that there is a reasonable basis for concluding that the separate respondents’ dumping is different” to depart from the “expected method”).¹¹

The CIT found that Commerce erred by relying on non-contemporaneity to summarily reject evidence suggesting that the separate rate does not reasonably reflect the non-selected separate rate respondents’ potential dumping margins.¹² Specifically, the CIT faulted Commerce for declining to consider the history of low calculated dumping margins, including individually calculated margins for Bosun, in prior administrative reviews.¹³ The CIT held that the non-contemporaneous nature of the margins from prior administrative reviews does not justify declining to consider the prior margins in assigning the separate rate in the instant remand redetermination.¹⁴

Moreover, the CIT opined that Commerce misread *Albemarle Corp.* Specifically, the CIT explained that *Albemarle Corp.* endorsed Commerce’s reliance upon non-contemporaneous data to depart from the expected method in determining the “all-others” rate.¹⁵ The CIT posited that *Albemarle Corp.* instructs Commerce to consider any evidence on the record, *e.g.*, the presence or absence of historical data, to determine whether to apply the expected method.¹⁶ The CIT stated that the contemporaneity of the data is then considered when establishing the reasonableness of a rate established by an alternative method.¹⁷

¹¹ *Id.* at 12.

¹² *Id.* at 15-16.

¹³ *Id.*

¹⁴ *Id.* at 16.

¹⁵ *Id.* at 16, n. 17 (citing *Albemarle Corp.*, 821 F.3d at 1356).

¹⁶ *Id.* at 16-17, n. 17 (citing *Albemarle Corp.*, 821 F.3d at 1355-56).

¹⁷ *Id.* at 17, n. 17 (citing *Albemarle Corp.*, 821 F.3d at 1356-59).

The CIT directed Commerce to either: (1) reconsider its earlier remand redetermination that declined to consider evidence suggesting that the separate rate for non-selected respondents is unreasonable; or (2) “explain why following the ‘expected method’ is reasonable in light of evidence of any margins assigned to the separate respondents and Bosun, when individually investigated in prior reviews.”¹⁸

IV. Discussion

The statute and Commerce’s regulations do not address the establishment of a rate to be applied to separate rate respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for separate rate respondents which were not individually examined in an administrative review of an antidumping duty order involving a non-market economy country. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate in a market economy investigation shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually examined, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Moreover, section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis*, or determined entirely under section 776 of the Act, we may use “any reasonable method” for assigning the rate to all other respondents not individually examined, “including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.” The Statement of Administrative Action accompanying the

¹⁸ *Id.* at 16-17.

Uruguay Round Agreements Act (SAA) explains that the “expected method” under section 735(c)(5)(B) of the Act “will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available.”¹⁹ Moreover, the SAA states that “if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.”²⁰ As explained above, in this remand redetermination, we have a calculated zero margin and a total AFA rate for the two mandatory respondents that are eligible for separate rates, and we simple-averaged these two rates for the non-selected separate rate respondents. This methodology follows the statutory guidance in 735(c)(5)(B) of the Act, the SAA, and *Albemarle Corp.* As discussed below, we are able to follow the expected method using a calculated zero percent rate and an AFA rate for the two mandatory respondents, and we have no basis to justify a departure from this method and *Albemarle Corp.* and assign rates from prior segments of the proceeding to the non-selected separate rate respondents in this remand redetermination.

As the *Second Remand Order* points out, *Albemarle Corp.* identifies non-exhaustively two types of situations in which Commerce may reasonably use the rates from a prior period: (1) in “situations where there is evidence that the overall market and the dumping margins have not changed from period to period”; or (2) in the AFA context, where deterrence may be considered, Commerce may use a common sense inference that the highest prior rate is the most probative evidence of current margins.²¹

In *Albemarle Corp.*, the U.S. Court of Appeals for the Federal Circuit (CAFC) found no

¹⁹ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 883 (SAA).

²⁰ *Id.*

²¹ See *Albemarle Corp.*, 821 F.3d at 1357; see also *Second Remand Order* at 14, n.16.

evidence that the overall market and the dumping margins remained the same from one completed administrative review to the next completed administrative review. To examine whether this first exception is applicable, the CAFC in *Albemarle Corp.* examined the individually calculated margins in its underlying investigation and administrative reviews and found a significant decline in dumping margins.²² Based on the declining dumping margins, the CAFC in *Albemarle Corp.* found no reason to believe that the margin of a respondent in the underlying administrative review would not have similarly declined.²³ Likewise, in the instant proceeding, we have no evidence that the overall market and the dumping margins remained the same in the periods of the administrative reviews preceding the underlying administrative review.²⁴

However, because the CIT directed us to “explain why following the ‘expected method’ is reasonable in light of evidence of any margins assigned to the separate respondents and Bosun, when individually investigated in prior reviews,”²⁵ we have considered the historic margins of the non-selected separate rate respondents, under respectful protest. The dumping margins for the individually examined respondents and the non-selected separate rate respondents in the four administrative reviews immediately preceding the underlying administrative review are as follows:

²² See *Albemarle Corp.*, 821 F.3d at 1357.

²³ *Id.*

²⁴ See, e.g., Final Remand Redetermination pursuant to *GODACO Seafood Joint Stock Company v. United States*, 435 F. Supp. 3d 1342 (CIT 2020) at 15, available at <https://enforcement.trade.gov/remands/20-42.pdf>.

²⁵ See *Second Remand Order* at 16-17.

	Final Results (Percent)	Post-Litigation Amended Final Results (Percent)			This Remand (Percent)
	2011-12 ²⁶	2012-13 ²⁷	2013-14 ²⁸	2014-15 ²⁹	2015-16
Chengdu Huifeng	4.83	12.05	39.66	82.05	*0.00
The Jiangsu Fengtai Single Entity			*56.67	**82.05	**82.05
Bosun	*4.65	*3.45	39.66	**82.05	41.03
Weihai Xiangguang Mechanical Industrial Co., Ltd.	*5.06	*22.57	Rescinded	82.05	***82.05
The Other Non-Selected Separate Rate Respondents	4.83	12.05	39.66	82.05	41.03

* Individually calculated margins

** AFA rate for the mandatory respondents

*** Separate rate for non-selected respondents in the *Final Results*. Because Weihai Xiangguang Mechanical Industrial Co., Ltd. (Weihai) is not a plaintiff in this litigation, this rate is final and conclusive for Weihai.

The administrative reviews covering the periods 2011-12, 2012-13, and 2013-14 are final and conclusive and no longer subject to judicial review. The 2014-15 administrative review continues to be subject to judicial review. The history of margins in this proceeding suggest an overall increase.³⁰ In addition, the last preceding administrative review in which the weight-

²⁶ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723, 35724 (June 24, 2014) (*Diamond Sawblades China 2011-12 Final*).

²⁷ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of Review and Amended Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 83 FR 55520, 55521 (November 6, 2018) (*Diamond Sawblades China 2012-13 Amended Final*).

²⁸ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of Review, Rescission of Administrative Review in Part, and Amended Final Results of the Antidumping Duty Administrative Review; 2013-2014*, 84 FR 23763, 23764-65 (May 23, 2019) (*Diamond Sawblades China 2013-14 Amended Final*).

²⁹ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of Review and Amended Final Results of the Antidumping Duty Administrative Review; 2014-2015*, 85 FR 66, 67 (January 2, 2020) (*Diamond Sawblades China 2014-15 Amended Final*).

³⁰ Even for Bosun alone, the history of margin in this proceeding indicates an increase of individually calculated margins. As stated above, the amended final dumping margin for the 2012-2013 administrative review was 3.45 percent for Bosun. In the 2014-15 administrative review, the calculated final margin was 6.19 percent for Bosun, which was amended to the AFA rate of 82.05 percent on remand. 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), and accompanying IDM at Comments 3-6 (*Diamond Sawblades China 2014-15 Final*), as amended in *Diamond Sawblades China 2014-15 Amended Final*.

averaged separate rate for non-selected respondents was based on calculated rates above *de minimis* was the 2013-14 administrative review. In that administrative review, the separate rate for the non-selected respondents was 39.66 percent,³¹ which is almost the same as the 41.03 percent separate rate calculated in this remand redetermination. The dumping margins have changed from one period of review to another, but the last calculated separate rate for non-selected respondents is only two periods of review prior to the underlying administrative review of this remand redetermination, and the difference between the two separate rates is minor. Therefore, we find that our use of the expected method provides a contemporaneous and reasonable separate rate for the non-selected respondents, and for this reason it is “reasonably reflective of potential dumping margins for non-investigated exporters or producers.”³²

V. Interested Parties’ Comments

Diamond Sawblades Manufacturers’ Coalition

- Diamond Sawblades Manufacturers’ Coalition (DSMC or the petitioner) agrees with the draft second remand redetermination.

Bosun Tools Co., Ltd.

- The separate rate for Bosun should be zero percent, the rate calculated for Chengdu Huifeng. It is inappropriate to calculate a separate rate based in part on the AFA rate of 82.05 percent assigned to the Jiangsu Fengtai Single Entity. The AFA rate dates back to the 2010-11 administrative review and is non-contemporaneous.
- Commerce’s narrow focus on the separate rate of 39.66 percent for non-selected respondents in the 2013-14 administrative review to justify the separate rate of 41.03 percent in this

³¹ See Final Second Remand Redetermination, dated March 29, 2019, pursuant to *Diamond Sawblades Manufacturers’ Coalition v. United States*, 359 F. Supp. 3d 1374 (CIT 2019), and available at <https://enforcement.trade.gov/remands/19-17.pdf>, for the methodology we used to calculate 39.66 percent (Final Second Remand Redetermination 2013-14).

³² See SAA at 883.

remand redetermination ignores the CIT's guidance to consider Bosun's historical individually calculated margins. Because Bosun was not individually examined in the 2013-14 administrative review, the high margins in that review are not demonstrative of Bosun's dumping margins since the 2009-10 administrative review.

- The Jiangsu Fengtai Single Entity's calculated margin in the 2013-14 administrative review is a historical outlier because it is too high to accurately represent actual dumping margins for a cooperative separate rate respondent. Weihai's calculated margin in that same review was only 21.67 percent before Commerce rescinded the administrative review for Weihai.
- Subsequent to the underlying administrative review of this remand redetermination, all separate rate respondents received 82.05 percent in the completed 2016-17 administrative review and all non-selected separate rate respondents, including Bosun, preliminarily received zero percent calculated for the sole mandatory respondent, Chengdu Huifeng, in the currently ongoing 2017-18 administrative review.

The Eight Non-Selected Separate Rate Respondents³³

- Commerce's focus on 39.66 percent in the 2013-14 administrative review ignores the lower margins in the 2011-12 and 2012-13 administrative reviews. The simple average of the separate rates for non-selected respondents in these three administrative review is 18.85 percent. The separate rates for non-selected respondents in the 2011-12 and 2012-13 administrative reviews were 4.83 percent and 12.05 percent, respectively. The 41.03 percent in this remand redetermination is 117.67 percent higher than 18.85 percent, 749.48 percent higher than 4.83 percent, and 240.50 percent higher than 12.05 percent.

³³ These non-selected separate rate respondents are: Danyang NYCL Tools Manufacturing Co., Ltd.; Danyang Weiwang Tools Manufacturing Co., Ltd.; Guilin Tebon Superhard Material Co., Ltd.; Hangzhou Deer King Industrial and Trading Co., Ltd.; Jiangsu Youhe Tool Manufacturer Co., Ltd.; Quanzhou Zhongzhi Diamond Tool Co., Ltd.; Rizhao Hein Saw Co., Ltd.; and Zhejiang Wanli Tools Group Co., Ltd. (collectively the Eight Non-Selected Separate Rate Respondents).

- For non-selected respondents in the 2013-14 administrative review, Commerce calculated 39.66 percent, which is anomalous and not in accordance with section 735(c)(5)(A) of the Act. The CIT in *Diamond Sawblades Manufacturers' Coalition v. United States*, 359 F. Supp. 3d 1374 (CIT 2019), determined that the case is *sui generis* and exhibited exceptional circumstances.
- In the 2013-14 administrative review, Commerce rescinded on remand the review for a mandatory respondent which received an individually calculated margin in the review. The CIT determined that calculation of the separate company rate under normal statutory procedures “was not likely to result in a rate that reflected a properly selected weight average rate required to be applied to all other non-examined companies.”³⁴ Therefore, 39.66 percent should not be considered in the evaluation of the historic separate rates for non-selected respondents to determine the reasonableness of 41.03 percent.
- All of the separate rate respondents were fully cooperative in the underlying administrative review of this remand redetermination. A separate rate for cooperative non-selected respondents that incorporates an AFA rate does not reasonably reflect the potential margins of the separate rate respondents. The mere presence of non-cooperating parties does not justify Commerce’s selection of rate for the cooperative non-selected respondents, as the CIT held in *Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1381 (CIT 2009) (*Amanda Foods I*). The fact that “the AFA rate applies to other companies is not evidence of dumping on the part of the separate rate companies.”³⁵ It is unlawful for Commerce to infer any adverse inference derived from a China-wide/total AFA rate to fully

³⁴ See the Eight Non-Selected Separate Rate Respondents’ Letter, “Comments to the Draft Remand Results,” dated August 21, 2020, quoting *Diamond Sawblades Manufacturers' Coalition v. United States*, 359 F. Supp. 3d at 1381 (CIT 2019).

³⁵ *Id.* at 4 (quoting *Baroque Timber Industries (Zhongshan) Co., Ltd. v. United States*, 971 F. Supp. 2d at 1333, 1343 (CIT 2014) (*Baroque Timber*)).

cooperative non-selected separate rate respondents.³⁶

VI. Commerce's Position:

We continue to assign 41.03 percent to the non-selected separate rate respondents, including Bosun, as we did in the final first remand redetermination. As explained above, we have relied on section 735(c)(5) of the Act for guidance when calculating the rate for respondents we did not examine in an administrative review.

Section 735(c)(5)(A) of the Act states, "For purposes of this subsection and section 733(d), the estimated all-others rate shall be 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 under section 776." Following the guidance in the language of section 735(c)(5)(A) of the Act that provides for the calculation of one all-others rate, it has been our practice to calculate one rate for all non-selected separate rate respondents in one segment of a proceeding.³⁷ Consistent with this practice, in the final first remand redetermination, we averaged the margins of the two mandatory respondents to calculate the separate rate for non-selected respondents.³⁸

We averaged the separate rate for non-selected respondents using not just the AFA rate of 82.05 percent, but also the individually calculated zero percent margin. Likewise, in the amended final results of the 2013-14 administrative review, we averaged the individual margin

³⁶ *Id.* at 4 (citing *Changzhou Hawd Flooring Co., v. United States*, 848 F.3d 1006, 1012 (Fed. Cir. 2017) (*Changzhou Hawd*)).

³⁷ See *Diamond Sawblades China 2012-13 Final*; see also *Diamond Sawblades China 2013-14 Final*; and *Diamond Sawblades China 2014-15 Final*; see also, e.g., *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 22399, 22400 (April 22, 2020) ("Commerce has updated *the rate* assigned to the non-selected companies, which is based on an average of the rates of the three mandatory respondents" (emphasis added)).

³⁸ See Final First Remand Redetermination at 7-18.

calculated for the Jiangsu Fengtai Single Entity and the individual margin calculated on remand using the data submitted by Weihai Xiangguang Mechanical Industrial Co., Ltd. (Weihai), to calculate the separate rate of 39.66 percent for non-selected respondents after our partial rescission of review on remand for Weihai.³⁹ In addition, in the 2011-12 and 2012-13 administrative reviews, in both of which Bosun was a mandatory respondent, we averaged the margins above *de minimis* for the mandatory respondents to calculate the separate rate for non-selected respondents.⁴⁰

As instructed by the CIT, we have considered individually calculated margins for Bosun in the 2011-12, 2012-13, and 2014-15 administrative reviews.⁴¹ As explained above, in these administrative reviews, Bosun's individually calculated margins were all above *de minimis* and, for the 2014-15 administrative review, we applied an AFA rate of 82.05 percent to Bosun on remand. Bosun was not an individually examined respondent in the 2009-10 and 2010-11 administrative reviews⁴² or in the 2016-17 administrative review.⁴³ In the individual examination of Bosun in previous administrative reviews, Bosun was found to have sold the subject merchandise at prices less than normal value, whereas Chengdu Huifeng in the final first

³⁹ See *Diamond Sawblades China 2013-14 Amended Final*, 84 FR at 23764; see also Final Second Remand Redetermination 2013-14.

⁴⁰ See *Diamond Sawblades China 2011-12 Final* and accompanying IDM at 4-5; and *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 IDM at 5-6 (*Diamond Sawblades China 2012-13 Final*), as amended in *Diamond Sawblades China 2012-13 Amended Final*.

⁴¹ See *Diamond Sawblades China 2011-12 Final*, *Diamond Sawblades China 2012-13 Final* and accompanying IDM at 5-6; and *Diamond Sawblades China 2014-15 Amended Final*.

⁴² See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143, 11145 (February 15, 2013), and accompanying IDM at Comments 4, 5, and 6; *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36166 (June 17, 2013), and accompanying IDM at 5-6.

⁴³ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Rescission of Antidumping Duty Administrative Review, in Part; 2016-2017*, 83 FR 18776 (April 30, 2018). Moreover, the CIT specifically ordered Commerce to "explain why following the 'expected method' is reasonable in light of evidence of any margins assigned to the non-selected respondents and {Bosun}, when individually investigated in prior reviews," not subsequent reviews. See *Second Remand Order* at 16-17.

remand redetermination was found to have sold the subject merchandise not at less than normal value.⁴⁴ Neither the above-*de minimis* margins either calculated for or assigned to Bosun as an individually examined respondent nor our practice of assigning one rate to all non-selected separate rate respondents in one segment of a proceeding, support individually assigning a separate rate of zero percent to Bosun, which is not an individually selected respondent in the underlying administrative review of this final remand redetermination.

The AFA rate of 82.05 percent that we assigned to the Jiangsu Fengtai Single Entity is final and conclusive. Although it is a rate determined in the amended final results of the 2010-11 administrative review,⁴⁵ the statute authorizes the use of a rate calculated in a previous segment of the proceeding as an AFA rate.⁴⁶ The SAA explains that the “expected method” under section 735(c)(5)(B) of the Act “will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available.”⁴⁷ Although the AFA rate of 82.05 percent was calculated in a previous administrative review, we find that averaging this AFA rate and the zero percent margin to calculate the separate rate for non-selected respondents, including Bosun, is consistent with the statutory guidance, the SAA, and *Albemarle Corp.*’s emphasis on the use of the contemporaneous data.

Our evaluation of the historic rates did not focus solely on the separate rate of 39.66 percent for non-selected respondents in the amended final results of the 2013-14 administrative review. As explained above, we took into consideration the separate rates for non-selected respondents in the 2011-12, 2012-13, and 2014-15 administrative reviews and noticed an overall

⁴⁴ See Final First Remand Redetermination; see also *Diamond Sawblades China 2011-12 Final*; and *Diamond Sawblades China 2012-13 Amended Final*.

⁴⁵ See *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Notice of Court Decision Not in Harmony With the Final Results of Review and Amended Final Results of the Antidumping Duty Administrative Review*, 81 FR 2843, 2844 (January 19, 2016).

⁴⁶ See section 776(b)(2)(C) and (c)(2) of the Act.

⁴⁷ See SAA at 883.

increase of the margins. Our remand redetermination to continue to assign 41.03 percent to non-selected separate rate respondents is based, in part, on the upward trend of margins in the previous administrative reviews.

Our evaluation of the historic rates did not involve the calculation of a simple average of the prior separate rates for non-selected respondents for purposes of comparing the simple average with 41.03 percent. We find that treating different separate rates calculated in different time periods equally by simple-averaging them is inconsistent with *Albemarle Corp.*'s emphasis on the contemporaneity of the separate rate."⁴⁸ Therefore, because the 39.66 percent rate applied in the 2013-2014 administrative review is more contemporaneous with the instant period of review, we consider it more relevant to our examination of whether the expected method yields a reasonably reflective rate in this review. This is not to say we have ignored the other prior rates, but given the CAFC's emphasis on contemporaneity in *Albemarle Corp.*, and given the CIT's highlighting of that emphasis in its opinion here,⁴⁹ we consider it reasonable to weigh the rates from the more contemporaneous segment more heavily in our analysis. Bosun's argument that, because it was not individually examined in the 2013-2014 administrative review, the margins are not demonstrative of Bosun's dumping, ignores that Bosun received the same separate rate of 39.66 percent in that review. As the CAFC explained, the statute presumes the representativeness of the largest exporters.⁵⁰ Although the CAFC recognized that the presumption can be overcome,⁵¹ there notably was no finding that the 39.66 percent separate rate from the 2013-2014 review was not representative.

The unusual circumstance that led to the recalculation of the separate rate for non-

⁴⁸ See *Albemarle Corp.*, 821 F.3d at 1357; see also *Second Remand Order* at 14, n.16.

⁴⁹ See *Second Remand Order* at 14 n.16.

⁵⁰ *Changzhou Hawd*, 848 F.3d at 1012.

⁵¹ *Id.*

selected respondents in the amended final results of the 2013-14 administrative review does not make the recalculated separate rate anomalous in determining the reasonableness of 41.03 percent in this final second remand redetermination. In the litigation for the 2013-14 administrative review, the CIT ordered a second remand to address the inaccuracy and unfairness of assigning the Jiangsu Fengtai Single Entity's final margin as the separate rate to non-selected respondents, when Weihai's data were available on the record to average the margins for the Jiangsu Fengtai Single Entity and Weihai to calculate the separate rate for non-selected respondents.⁵² Normally, when we have two mandatory respondents and one of them later becomes unavailable for individual calculation for various reasons, *e.g.*, the mandatory respondent later decides not to cooperate by withdrawing from scheduled verifications before the completion of an investigation, we normally assign the remaining mandatory respondent's calculated margin to the non-selected separate rate respondents.⁵³ However, because we had Weihai's data on the record, and to comply with the CIT's remand order, we took Weihai's data into consideration to calculate the separate rate for non-selected respondents.⁵⁴

Accordingly, even as we continued to rescind the administrative review, in part, for Weihai, we calculated a margin using Weihai's information with certain corrections for the sole purpose of averaging Weihai's margin and the Jiangsu Fengtai Single Entity's margin and

⁵² See *Diamond Sawblades Manufacturers' Coalition v. United States*, 359 F. Supp. 3d 1374, 1381-82 (CIT 2019).

⁵³ Compare, *e.g.*, *Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 53456 (November 16, 2017), and accompanying Preliminary Decision Memorandum at 2, 17, with *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15365 (April 10, 2018), and accompanying IDM at 3-4. In the antidumping duty investigation of certain tool chests and cabinets from China, we preliminarily assigned the weighted average of the above *de minimis* margins of the two mandatory respondents to the non-selected separate rate respondents. For the final determination of that investigation, because one of the two mandatory respondents withdrew its participation from the investigation, we assigned the final above *de minimis* margin of the remaining mandatory respondent to the non-selected separate rate respondents.

⁵⁴ See *Diamond Sawblades Manufacturers' Coalition v. United States*, 359 F. Supp. 3d at 1381-82.

assigning the average rate as the separate rate for non-selected respondents.⁵⁵ The CIT sustained our final remand redetermination and the litigation became final and conclusive. The unusual nature of that calculation was the fact that the separate rate for non-selected respondents was based in part on the data from a company rescinded from the administrative review on remand, not the calculation methodologies employed in calculating the margins for the Jiangsu Fengtai Single Entity and Weihai and averaging the margins for the two companies to calculate a separate rate for non-selected respondents.⁵⁶ No interested parties challenged that remand redetermination and it was sustained by the CIT.⁵⁷ In response to the draft second remand redetermination, there has been no argument that the unusual nature of the separate rate for non-selected respondents in the amended final results of the 2013-14 administrative review led to an inaccuracy or unfairness to the separate rate for non-selected respondents. We do not find that this unusual circumstance provides justification for us not to consider the separate rate for non-selected respondents in the amended final results of the 2013-14 administrative review.

Regarding Bosun's arguments that the Jiangsu Fengtai Single Entity's calculated margin from the 2013-2014 administrative review was a historical outlier, Bosun fails to identify anything specific about the calculation of the Jiangsu Fengtai Single Entity's margin that would undermine its accuracy or relevance to our analysis. As explained above, the CIT sustained Commerce's use of the Jiangsu Fengtai Single Entity's rate in the average used to determine the separate rate in the 2013-2014 review. Moreover, although Bosun points out that Weihai's

⁵⁵ See Final Second Remand Redetermination 2013-14 at 8-11 (describing adjustments to Weihai's margin based on the value of purchased steel cores and surrogate truck freight, and the use of Weihai's margin information to determine the separate rate).

⁵⁶ In addition, in *Diamond Sawblades Manufacturers' Coalition v. United States*, 301 F. Supp. 3d 1326 (CIT 2018), the CIT sustained most of the calculation methodologies used in the 2013-14 administrative review and litigated. However, the CIT ordered a remand for us reconsider the calculation of surrogate truck freight distances and the rejection of the withdrawal of a review request for Weihai. *Id.* at 1347-49, 1355-59.

⁵⁷ See *Diamond Sawblades Manufacturers' Coalition v. United States*, Consol. Court No. 16-00124, Slip Op. 19-54 (CIT 2019).

calculated margin was 21.67 percent prior to the rescission of its review, Bosun ignores that other issues remanded by the CIT increased the margin ultimately calculated based on Weihai's information, and that the 39.66 percent separate rate was based on the weighted average of Weihai and the Jiangsu Fengtai Single Entity's information, thus fairly incorporating the margin based on Weihai's information.⁵⁸

We find that *Baroque Timber* and *Changzhou Hawd* are distinguishable from this final second remand redetermination. Importantly, *Baroque Timber* was ultimately overturned by *Changzhou Hawd*. In the final remand redetermination for *Baroque Timber*, Commerce recalculated a separate rate for non-selected respondents by averaging the *de minimis* rates for the three mandatory respondents and the AFA rate for the China-wide entity, which is not an individually selected separate rate respondent.⁵⁹ *Baroque Timber* affirmed Commerce's recalculation of the separate rate for non-selected respondents but ordered a second remand for further explanation on how the recalculated separate rate is related to economic reality.⁶⁰ On remand, Commerce explained that the separate rate for the non-selected respondents should not be drawn entirely from the three mandatory respondents that received *de minimis* rates for two reasons: (1) if any of the companies that did not respond to the quantity and value questionnaires had chosen to cooperate, the examined company's rate would have been above *de minimis*, which would have been the separate rate for non-selected respondents; and (2) in the subsequent first administrative review of the antidumping duty order, Commerce found dumping.⁶¹ The CIT

⁵⁸ See Final Second Remand Redetermination 2013-14 at 8-11 (adjusting Weihai's margin based on corrections to purchased steel core valuation and surrogate truck freight).

⁵⁹ See Final Remand Redetermination pursuant to *Baroque Timber Industries (Zhongshan) Co., Ltd. v. United States*, 925 F.Supp.2d 1332 (CIT 2013), available at <https://enforcement.trade.gov/remands/13-96.pdf>.

⁶⁰ See *Baroque Timber*, 971 F. Supp. 2d at 1343.

⁶¹ See Final Remand Redetermination pursuant to *Baroque Timber*, available at <https://enforcement.trade.gov/remands/14-35.pdf>.

affirmed Commerce's explanation.⁶²

The CAFC in *Changzhou Hawd* vacated the CIT's affirmation and remanded Commerce's decision to average the *de minimis* rates for the three mandatory respondents and the AFA rate for the China-wide entity. In *Changzhou Hawd*, the CAFC held that Commerce took an impermissibly narrow view of *Albemarle Corp.* by: (1) failing to consider the statutory standard for the mandatory respondents' representativeness of the market; and (2) deviating from the "expected method" without justification, when Commerce averaged the rates of the three mandatory respondents and the China-wide entity to calculate the separate rate for non-selected respondents.⁶³ This final second remand redetermination is different from *Baroque Timber* and *Changzhou Hawd*. In this final second remand redetermination, we averaged the zero margin and the AFA rate for the two individually selected respondents and we did not use the rate for the China-wide entity in the calculation of the separate rate for non-selected respondents.⁶⁴ In other words, in *Changzhou Hawd*, the CAFC faulted Commerce for not making the findings necessary to justify departing from the expected method,⁶⁵ whereas here we are following the expected method to determine the separate rate; therefore, no such findings are necessary.

Amanda Foods supports our use of the contemporaneous rate in this final second remand redetermination.⁶⁶ In the underlying administrative review of *Amanda Foods*, Commerce calculated *de minimis* margins for the two mandatory respondents but assigned to non-selected

⁶² See *Changzhou Hawd Flooring Co., Ltd. v. United States*, 44 F. Supp. 3d 1376 (CIT 2015).

⁶³ See *Changzhou Hawd*, 848 F.3d at 1012 ("Thus, the mandatory respondents in this matter are assumed to be representative. Under *Albemarle*, Commerce could not deviate from the expected method unless it found, based on substantial evidence, that the separate-rate firms' dumping is different from that of the mandatory respondents. But it has not done so.")

⁶⁴ If we used the rate for the China-wide entity, the separate rate for non-selected respondents would have been 54.70 percent, which is the simple average of 82.05 percent for the Jiangsu Fengtai Single Entity, zero percent for Chengdu Hui Feng, and 82.05 percent for the China-wide entity.

⁶⁵ See *Changzhou Hawd*, 848 F.3d at 1013.

⁶⁶ See *Amanda Foods (Vietnam) Ltd. v. United States*, 774 F. Supp. 2d 1286 (CIT 2011) (*Amanda Foods III*).

separate respondents the rates from previous segments of the proceeding.⁶⁷ The CIT held in *Amanda Foods* that Commerce provided no justification for the use of rates from prior segments of the proceeding and ordered Commerce to either: (1) calculate the separate rate for non-selected respondents by averaging the rates for the mandatory respondents; or (2) provide justification for the use of rates from prior segments of the proceeding.⁶⁸ On remand, Commerce continued to use the rates from prior segments of the proceeding based on its statutory interpretation.⁶⁹ The CIT ordered a second remand, holding that Commerce impermissibly interpreted sections 735(c)(5)(A) and (B) of the Act, the same statutory provisions that provide guidance for averaging the zero percent margin for Chengdu Huifeng and the AFA rate for the Jiangsu Fengtai Single Entity in this final second remand redetermination.⁷⁰ On second remand, Commerce averaged the rates of the two mandatory respondents to calculate the separate rate for non-selected respondents.⁷¹ The CIT sustained Commerce's recalculation.⁷²

Thus, we find Bosun's and the non-selected respondents' arguments unpersuasive. Consistent with the *Second Remand Order*, we have considered the evidence of prior dumping margins in evaluating whether the expected method results in a reasonably reflective separate rate. Notably, the rates from the prior reviews have increased from review to review, and the separate rate from the most contemporaneous prior review is similar to the separate rate determined here. We find that this evidence outweighs the relatively low margins calculated in certain prior, less contemporaneous reviews, and therefore the 41.03 percent separate rate,

⁶⁷ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52273 (September 9, 2008), and accompanying IDM at Comment 6.

⁶⁸ See *Amanda Foods I*.

⁶⁹ See Final Remand Redetermination pursuant to *Amanda Foods I*, available at <https://enforcement.trade.gov/remands/09-106.pdf>.

⁷⁰ See *Amanda Foods (Vietnam) Ltd. v. United States*, 714 F. Supp. 2d 1282 (CIT 2010) (*Amanda Foods II*).

⁷¹ See Final Remand Redetermination pursuant to *Amanda Foods II*, available at <https://enforcement.trade.gov/remands/10-69.pdf>.

⁷² See *Amanda Foods III*.

calculated in accordance with the expected method, is reasonably reflective of the non-selected respondents' potential dumping margin.

Finally, because we have not determined that the “expected method” does not reflect Bosun’s or one or more of the separate rate respondents’ potential dumping margins, we are not using an “other reasonable methodology” to determine the separate rate for those entities.⁷³

VII. Final Results of Redetermination

Pursuant to the *Second Remand Order*, we have explained why following the “expected method” is reasonable in light of evidence of margins previously calculated for or assigned to the non-selected respondents, including Bosun, in prior administrative reviews. The separate rate for these non-selected respondents continues to be 41.03 percent and we are making no changes from our Final First Remand Redetermination for these entities.

10/13/2020

X 

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

⁷³ See *Second Remand Order* at 17 n.18.