UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-051
Investigation
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November 6, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Certain Hardwood Plywood Products from People's Republic of China

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I. SUMMARY

The Department of Commerce (the Department) determines that imports of certain hardwood plywood products (hardwood plywood) from People's Republic of China (the PRC) are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2016, through September 30, 2016.

As a result of our analysis of the comments submitted by interested parties and based on our findings at verification, we made changes to the margin calculations for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

On June 23, 2017, the Department published its *Preliminary Determination* in the LTFV investigation of hardwood plywood from the PRC.[1] On June 30, 2017, the Department

[1] *See Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 28629 (June 23, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

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postponed the final determination,[2] and on July 17, 2017, the Department published its *Amended Preliminary Determination*.[3]

Between August and September 2017, the Department received supplemental questionnaire responses and additional and revised data from mandatory respondent, Linyi Chengen Import and Export Co., Ltd. (Chengen).[4] Additionally, in September 2017, the Department conducted verification of the sales and factors of production (FOP) data reported by Chengen pursuant to section 782(i) of the Act.[5]

We invited parties to comment on the *Preliminary Determination*. On August 15, 2017, mandatory respondent Shandong Dongfang Bayley Wood Co., Ltd. (Bayley),[6] Husch Blackwell clients,[7] Kutak Rock clients,[8] Mowry & Grimson clients,[9] FEA Group and separate rate

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[2] *See Certain Hardwood Plywood Products from the People's Republic of China: Postponement of Final Determination of Sales at Less Than Fair Value Investigation*, 82 FR 29827 (June 30, 2017).

[3] *See Certain Hardwood Plywood Products from the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 82 FR 32683 (July 17, 2017) (*Amended Preliminary Determination*).

[4] *See* Chengen's Letter to the Department re: "Hardwood Plywood Products from the People's Republic of China: Supplemental Questionnaire Response," dated August 8, 2017; Chengen's Letter to the Department re: "Hardwood Plywood Products from the People's Republic of China: Supplemental Questionnaire Response," dated August 23, 2017; Chengen's Letter to the Department re: "Hardwood Plywood Products from the People's Republic of China: Ninth Supplemental Questionnaire Response," dated August 29, 2017; and Chengen's Letter to the Department re: "Hardwood Plywood Products from the People's Republic of China: Revised U.S. Sales Database," dated September 29, 2017.

[5] *See* Memorandum, "Verification of the Questionnaire Responses of Linyi Chengen Import and Export Co., Ltd. in the Antidumping Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China," dated September 29, 2017 (Chengen Verification Report).

[6] *See* Letter from Shandong Dongfang Bayley Wood Co., Ltd. (Bayley) re: "Hardwood Plywood Products from the People's Republic of China: Case Brief," dated August 15, 2017 (Bayley's Brief).

[7] *See* Letter from Zhejiang Dehua TB Import & Export Co., Ltd., Shandong Anxin Timber Co., Ltd., Jiaxing Kaochuan Woodwork Co., Ltd., Shandong Johnson Trading Co., Ltd., Qingdao Top P&O International Corp., Xuzhou Amish Import & Export Trade Co., Ltd., Linyi Dahua Wood Co., Ltd., Linyi City Dongfang Fukai Wood Industry Co., Ltd., Linyi City Dongfang Jinxin Economic and Trade Co., Ltd., Happy Wood Industrial Group Co., Ltd., Xuzhou Shuiwangxing Trading Co., Ltd., Cosco Star International Co., Ltd., Feixian Jinde Wood, Factory, G.D. Enterprise Limited, Jiangsu High Hope Arser Co., Ltd., Highland Industries Inc., Jiangsu Qianjiuren International Trading Co., Ltd., Jiashan Dalin Wood Industry Co., Ltd., Leadwood Industrial Corp., Linyi City Shenrui International Trade Co., Ltd., Pingyi Jinniu Wood Co., Ltd., Suzhou Dongsheng Wood Co., Ltd.,, Xuzhou Tianshan Wood Co., Ltd., Yangzhou Hanov International Co., Ltd., Suqian Yaorun Trade Co., Ltd., Deqing China-Africa Foreign Trade Port Co., Ltd. and Pizhou Jin Sheng Yuan International Corp., Ltd. (collectively, Husch Blackwell clients) re: "Certain Hardwood Plywood Products from the People's Republic of China: Case Brief," dated August 15, 2017 (Husch Blackwell Clients' Brief).

[8] *See* Letter from China Friend Ltd., Linyi Tianhe Wood Co., Ltd., Shanghai Luli Trading Co., Ltd., Shandong Huaxin Jiansheng Wood Co., Ltd., Shandong Huiyu International Trade Co., Ltd., Xuzhou Dong Fang Hua Tai International Trade Co., Ltd., InterGlobal Forest LLC, and Kanak Exports (collectively, Kutak Rock clients) re: "Certain Hardwood Plywood Products from the People's Republic of China; Submission of Comments to the Preliminary Determination," dated August 15, 2017 (Kutak Rock Clients' Brief).

[9] *See* Letter from Patriot Timber Products, Inc., Taraca Pacific. Inc., Northwest Hardwoods, Inc., Liberty Woods International, Inc., Concannon Corp. Ltd., Canusa Wood Products, Sierra Forest Products, Inc., McCorry & Company Limited, Laminate Technologies Inc., Masterbrand Cabinets, Inc., Prime Wood Inc., USPLY LLC, Holland Southwest International Inc., Genesis Products, Inc., Richmond International Forest Products, Inc., MJB Wood Group, Inc. and Fabuwood Cabinetry Corp. (collectively, Mowry & Grimson clients) re: "Hardwood

applicants,[10] and Hanbao and Baoqi,[11] submitted timely filed case briefs related to the Department's preliminary decision regarding Bayley and the separate rate applicants. On August 22, 2017, the petitioners submitted a timely filed rebuttal brief.[12] On October 6, 2017, Mowry & Grimson clients[13] and the petitioners[14] submitted timely filed case briefs related to all remaining antidumping issues. On October 11, 2017, Mowry & Grimson clients,[15] the petitioners,[16] and Chengen[17] submitted timely filed rebuttal briefs. On October 20, 2017, Chengen submitted a timely filed revised rebuttal brief.[18]

On November 2, 2017, the Department held a closed hearing and a public hearing, limited to the issues raised in the case and rebuttal briefs.

Plywood Products from the People's Republic of China: Case Brief on Separate Rate Issues," dated August 15, 2017 (Mowry & Grimson Clients' Brief).

[10] *See* Letter from Xuzhou Jiangyang Wood Industries Co., Ltd. and Xuzhou Jiangheng Wood Products Co., Ltd. (collectively, FEA Group); Linyi San Fortune Wood Co., Ltd., Far East American, Inc., Suining Pengxiang Wood Co., Ltd., Xuzhou Longyuan Wood Industry Co., Ltd., Anhui Hoda Wood Co., Ltd., Celtic Co., Ltd., Feixian Longteng Wood Co., Ltd., Golder International Trade Co., Ltd., Huainan Mengping Import and Export Co., Ltd., Jiangsu Top Point International Co., Ltd., Jiaxing Gsun Imp. & Exp. Co., Ltd., Jiaxing Hengtong Wood Co., Ltd., Linyi Evergreen Wood Co., Ltd., Linyi Glary Plywood Co., Ltd., Linyi, Hengsheng Wood Industry Co., Ltd., Linyi Huasheng Yongbin Wood Co., Ltd., Linyi Jiahe Wood Industry Co., Ltd., Linyi Linhai Wood Co., Ltd., Linyi Mingzhu Wood Co., Ltd., Qingdao Good Faith Import and Export Co., Ltd., Shangdong Jinluda International Trade Co., Ltd., Shangdong Qishan International Trading Co., Ltd., Shandong Senmanqi Import & Export Co., Ltd., Shandong Shengdi International Trading Co., Ltd., Shanghai Brightwood Trading Co., Ltd., Shanghai Futuwood Trading Co., Ltd., Sumec International Technology Co., Ltd., Suqian Hopeway International Trade Co., Ltd., Suzhou Fengshuwan Import and Exports Trade Co., Ltd., Suzhou Oriental Dragon Import and Export Co., Ltd., Xuzhou Andefu wood Co., Ltd., Xuzhou DNT Commercial Co., Ltd., Xuzhou Pinlin International Trade Co., Ltd., Xuzhou Shengping Imp and Exp Co. Ltd., Xuzhou Timber International Trade Co., Ltd., Yishui Zelin Wood Made Co., Ltd. (collectively, separate rate applicants) re: "Hardwood Plywood Products from the People's Republic of China: Separate Rate Case Brief Re Separate Rate," dated August 15, 2017 (FEA Group's Brief).

[11] *See* Letter from Jiangsu Hanbao Building Material Co., Ltd. and Xuzhou Baoqi Wood Product Co., Ltd. (collectively, Hanbao and Baoqi) re: "Certain Hardwood Plywood Products from the People's Republic of China, A–570–051; Administrative Case Brief," dated August 15, 2017 (Hanbao and Baoqi's Brief).

[12] *See* Letter from the Coalition for Fair Trade in Hardwood Plywood and its individual members (collectively, the petitioners) re: "Certain Hardwood Plywood Products from the People's Republic of China: Rebuttal Brief," dated October 22, 2017 (Petitioners' Rebuttal Brief).

[13] *See* Letter from Mowry & Grimson clients re: "Hardwood Plywood Products from the People's Republic of China: Case Brief," dated October 6, 2017 (Mowry & Grimson Clients' Brief II) (Arguments in Mowry & Grimson Clients' Brief II pertaining to industry support determination are addressed in the Final Scope Memorandum, dated concurrently with this document).

[14] *See* Letter from the petitioners re: "Certain Hardwood Plywood Products from the People's Republic of China: Case Brief of the Coalition for Fair Trade in Hardwood Plywood," dated October 6, 2017 (Petitioners' Brief II).

[15] *See* Letter from Mowry & Grimson clients re: "Hardwood Plywood Products from the People's Republic of China: Letter in Lieu of Rebuttal Brief," dated October 11, 2017 (Mowry & Grimson Clients' Rebuttal Brief).

[16] *See* Letter from the petitioners re: "Certain Hardwood Plywood Products from the People's Republic of China: Reply Brief of the Coalition for Fair Trade in Hardwood Plywood," dated October 11, 2017 (Petitioners' Rebuttal Brief II) (Arguments in Petitioners' Rebuttal Brief II pertaining to industry support determination are addressed in the Final Scope Memorandum, dated concurrently with this document).

[17] *See* Letter from Chengen re: "Hardwood Plywood Products from the People's Republic of China: Rebuttal Brief," dated October 11, 2017.

[18] *See* Letter from Chengen re: "Hardwood Plywood Products from the People's Republic of China: Redacted Rebuttal Brief," dated October 20, 2017 (Chengen's Rebuttal Brief).

III. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of this proceeding, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo. The veneers, along with the core may be glued or otherwise bonded together. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2016 (including any revisions to that standard).

For purposes of this investigation a "veneer" is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium-density fiberboard (MDF).

All hardwood plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a "distressed" appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has underwent other forms of minor processing.

All hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product. The scope of the investigation excludes the following items: (1) structural plywood (also known as "industrial plywood" or "industrial panels") that is manufactured to meet U.S. Products Standard PS 1-09, PS 2-09, or PS 2-10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), and which has both a face and a back veneer of coniferous wood; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People's Republic of China, Import Administration, International Trade Administration. See Multilayered Wood Flooring from the People's Republic of China, 76 FR 76690 (December 8, 2011) (amended final determination of sales at less than fair value and antidumping duty order), and Multilayered Wood Flooring from the People's Republic of China, 76 FR 76693 (December 8, 2011) (countervailing duty order), as amended by Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders, 77 FR 5484 (February 3, 2012); (4) multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (5) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (6) products made entirely from bamboo and adhesives (also known as "solid bamboo"); and (7) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an "Exterior" or "Exposure 1" bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m3 permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges.

Excluded from the scope of this investigation are wooden furniture goods that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of this investigation is "ready to assemble" (RTA) furniture. RTA furniture is defined as (A) furniture packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes 1) all wooden components (in finished form) required to assemble a finished unit of furniture, 2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a finished unit of furniture, and 3) instructions providing guidance on the assembly of a finished unit of furniture; (B) unassembled bathroom vanity cabinets, having a space for one or more sinks, that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional component shape/size, painted or stained prior to importation, and stacked within a singled shipping package, except for furniture feet which may be packed and shipped separately; or (C) unassembled bathroom vanity linen closets that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional shape/size, painted or stained prior to importation, and stacked within a single shipping package, except for furniture feet which may be packed and shipped separately.

Excluded from the scope of this investigation are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of this investigation are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes 1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, 2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and 3) instructions providing guidance on the assembly of a finished unit of cabinetry.

Excluded from the scope of this investigation are finished table tops, which are table tops imported in finished form with pre-cut or drilled openings to attach the underframe or legs. The table tops are ready for use at the time of import and require no further finishing or processing.

Excluded from the scope of this investigation are finished countertops that are imported in finished form and require no further finishing or manufacturing.

Excluded from the scope of this investigation are laminated veneer lumber door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2413 millimeters (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers; and (5) top layer machined with a curved edge and one or more profile channels throughout.

Imports of hardwood plywood are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4160; 4412.31.4180; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5265; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5700; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3141; 4412.94.3161; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5115; and 4412.99.5710.

Imports of hardwood plywood may also enter under HTSUS subheadings 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.94.5100; 4412.94.9500; and 4412.99.9500. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

IV. SCOPE COMMENTS

We invited parties to comment on the Department's Preliminary Scope Memorandum,[19] Additional Preliminary Scope Memorandum,[20] and Post-Preliminary Scope Memorandum.[21] The Department reviewed the briefs submitted by interested parties, considered the arguments therein, and has made changes to the scope of the investigation. For further discussion, see the Department's Final Scope Decision Memorandum.[22]

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our analysis of the comments submitted by interested parties and our findings at verification, we made changes from the *Preliminary Determination*.

With respect to the margin calculation for Chengen, we are using the Department's intermediate input methodology to value Chengen's factors of production for the final determination, as discussed in Comment 2, *infra*, and in Chengen's final analysis memorandum.

With respect to the margin for the separate rate respondents, we are using Chengen's weighted-average dumping margin. Normally, the Department's practice is to assign to separate rate entities that were not individually examined a rate equal to the average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available (AFA), in accordance with section 735(c)(5)(A) of the Act.[23] For this final determination, we have calculated a weighted-average dumping margin for Chengen which is not zero, *de minimis*, or based entirely on facts available. The dumping margin for the other mandatory respondent, Bayley, is based entirely on facts available. Accordingly, we have determined to use Chengen's weighted-average dumping margin as the margin for the separate rate respondents that were not individually examined.

With respect to the AFA rate for the PRC-wide entity, we have also selected Chengen's weighted-average dumping margin. In a less-than-fair-value investigation, the Department's general practice with respect to the assignment of a rate as AFA is to assign the higher of the highest dumping margin alleged in the petition, or the highest calculated dumping margin of any

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[19] Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," dated April 17, 2017 (Preliminary Scope Memorandum).

[20] Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Additional Scope Comments Preliminary Decision Memorandum and Extension of Deadlines for Scope Case Briefs and Scope Rebuttal Briefs," dated June 16, 2017 (Additional Preliminary Scope Memorandum).

[21] Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Scope Comments Post-Preliminary Decision Memorandum," dated October 16, 2017 (Post-Preliminary Scope Memorandum).

[22] Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Final Scope Decision Memorandum," dated concurrently with this document.

[23] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

respondent in the investigation.[24] Accordingly, we have selected the weighted-average dumping margin calculated for Chengen in the final determination because it is the highest calculated dumping margin of any respondent in this investigation and it is higher than the highest dumping margin alleged in the petition (114.72 percent). Because this is a calculated margin, based on a mandatory respondent's data in this segment of the proceeding, it does not constitute secondary information and, therefore, does not need to be corroborated.[25]

VI. CRITICAL CIRCUMSTANCES

On June 16, 2017, the Department preliminarily determined that critical circumstances exist for PRC-wide entity, but not for Chengen or the separate rate respondents.[26] Specifically, we preliminarily determined that because Chengen's preliminary margin did not exceed the threshold sufficient to impute knowledge of dumping, there was not a reasonable basis to believe or suspect that importers knew or should have known that Chengen was selling subject merchandise at LTFV and, accordingly, we did not examine whether imports from Chengen were massive over a relatively short period.[27] Because Chengen's margin for the final determination exceeds the threshold sufficient to impute knowledge of dumping, we also examined for the final determination whether imports from Chengen were massive over a relatively short period. We found that there were not massive imports for Chengen and that critical circumstances, therefore, do not exist for Chengen.[28] Accordingly, for the final determination, the Department continues to determine critical circumstances do not exist for Chengen or the separate rate respondents.[29] With respect to the PRC-wide entity, as explained above, for the final determination the Department has revised the AFA rate assigned to the PRC-wide entity. Because this revised AFA rate exceeds the threshold sufficient to impute knowledge of dumping, we continue to find, for the reasons explained in the *Preliminary Determination* that critical circumstances do exist for the PRC-wide entity.[30]

VII. LIST OF ISSUES

Comment 1: The Department's Continued Use of AFA for Bayley
Comment 2: Valuation of Raw Material (Logs) or Intermediate Input (Veneers)
Comment 3: Selection of Surrogate Country
Comment 4: Department's Limited Selection of Mandatory Respondents and Denial of the FEA Group's Request for Voluntary Respondent Status

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[24] *See Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying Issues and Decision Memorandum at Comment 20.
[25] *See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 20008), and accompanying Issues and Decision Memorandum, at Comment 1.
[26] *See* Preliminary Decision Memorandum, at 4-9.
[27] *See* Preliminary Decision Memorandum, at 7.
[28] *See* Memorandum, "Antidumping Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Critical Circumstances Analysis for Final Determination," dated concurrently with this document (Critical Circumstances Memorandum).
[29] *Id.*
[30] Preliminary Decision Memorandum, at 7-9; Critical Circumstances Memorandum.

Comment 5: The Department Should Find Negative Critical Circumstances for the PRC-wide Entity
Comment 6: The Department Should Treat China as a Market Economy
Comment 7: The Department Should Grant Hanbao a Separate Rate
Comment 8: Moot Arguments regarding AFA to Separate Rate Applicants
Comment 9: Bifurcated Briefing Schedule

VIII. DISCUSSION OF COMMENTS

Comment 1: The Department's Continued Use of AFA for Bayley

Bayley's Comments:

- The Department asserts that evidence shows that Shelter Forest[31] exerts material control over Bayley and four other Chinese producers. However, the Department is precluded from finding "control" unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.[32]
- Despite the above-stated standard, the Department has used inconclusive information from an investigation that took place five years ago and refused to collect relevant information from Bayley, Shelter Companies, and affiliates that could be used to substantiate the "weight" analysis.[33]
- The Department refused to issue supplemental questionnaires to Bayley, to Shelter Forest International, to Bayley's current customer Shelter Forest, or to any of the potential "affiliates" implicated by the petitioners' allegations.[34]
- The Department claims that Shelter Forest and Shelter Forest International are "operating as one and the same", however the two companies had different registry numbers, different registry dates, different principal places of business, different presidents, and different secretaries.[35]
- The Department lists Ryan Loe as the president of both entities, however this has not been the case since April 2, 2014, and Ryan Loe was never the president of both SFIA and SFII at the same time.[36]
- Shelter Forest and Shelter Forest International did not fail to disclose that Mr. Loe was president of Shelter Forest International in 2011. Corporate documents support the narrative explanation that Bayley and Shelter Forest provided to the Department confirming the former president of Shelter Forest International resigned his position and established Shelter Forest on December 13, 2013.[37]

[31] At issue are two similarly named companies: Shelter Forest International Inc. (Shelter Forest International) and Shelter Forest International Acquisition, Inc. (Shelter Forest).
[32] *See* Bayley's Brief, at 6.
[33] *Id.*
[34] *Id*. at 9.
[35] *Id.*
[36] *Id*. at 10.
[37] *Id*. at 11.

- The conclusion that defunct companies in fact controlled or control the pricing and production decisions of Bayley is unreasonable without significant additional inquiry and factual support.[38]
- The Department is considering two brochures which were found on the internet as "cached" pages as evidence of a relationship between Shelter Forest and Bayley. A cached webpage is a version that is outdated or incorrect and has been removed from the site.[39]
- Shelter Forest provided the Department with a 2016 version of its promotional brochure which states, "{f}or over a decade Shelter Forest International's President, Ryan Loe, and Bayley Wood's Sun Ziping have worked together to manufacture and market the best hardwood plywood possible." However, the Department should not interpret this as a demonstration of control. It did not accept Shelter Forest International's claims of control at face value in 2012 and should not accept them now.[40]
- The Department has declined to investigate the petitioners' allegations of affiliation and provided Bayley with no opportunity to definitively and finally rebut these allegations.[41]
- The record is not missing information regarding three of the four additional potential affiliates: Xuzhou Shelter Import & Export Co., Ltd. (Xuzhou Shelter), Jiangsu Shengyang Industrial Joint Stock (Shengyang), and Henan Hongda Wood Craft Industry, Co. (Hongda).[42] Shengyang and Hongda filed separate rate applications with the Department.[43] Curtis, Mallet-Prevost, Colt & Mosle LLP entered its appearance on behalf of Shelter, Xuzhou Shelter, Shengyang, and Hongda without reference to any affiliation between them.[44] In their SRA responses, neither Hongda nor Shengyang listed Bayley or Shelter Forest or Xuzhou Shelter as an affiliate company. Hongda also did not list Shengyang as an affiliate, and Shengyang did not list Hongda as an affiliate. [45]
- This antidumping investigation contains documents that were not on the record of the CVD investigation.[46]
- Concerning Company D, Bayley has provided the Department with information regarding all of its suppliers in its Section D response.[47]
- The Department refused to issue a deficiency questionnaire to Bayley in violation of section 782(d) of the Act, and rejected or ignored Bayley's proffered material to supplement the agency record and show it has no affiliation with any Shelter company.[48]
- If the Department has determined that either: (i) the deficiency findings on the CVD record do not apply to the AD case or (ii) Bayley has satisfactorily explained and provided sufficient data to remedy any such deficiencies, then the Department had no

[38] *Id*. at 13.
[39] *Id*.
[40] *Id*. at 14.
[41] *Id*. at 15.
[42] *Id*. at 16.
[43] *Id*. at 17.
[44] *Id*.
[45] *Id*.
[46] *Id*. at 18.
[47] *Id*. at 19.
[48] *Id*.

need for further information and should have calculated a non-adverse margin for Bayley in the preliminary determination.[49]

- In *China Kingdom,* 507 F. Supp. 2d at 1354, 1357, the Court concluded that an interested party situated in the position of China Kingdom must receive the opportunity to remedy or explain the deficiency, if allowing the opportunity is practicable in light of the statutory limits.[50]
- The Department rejected Bayley's proffered material on May 1, 2017, while the Department's preliminary determination in this investigation was due on June 16, 2017. Given the Court's statements of law in the *China Kingdom* case, the Department must apply section 782(d) of the Act in this case, where no basis is apparent to find that giving Bayley a chance to cure any perceived deficiencies is impractical.[51]
- In accordance with section 782((i)(1) of the Act, the Department is compelled to verify all of the information that it relies upon in making a final determination in an investigation.[52]
- In *Agro Dutch*, the Court stated that: The Department has the duty of administering the proceeding fairly, and if Commerce is unclear on invoices or information it is incumbent on Commerce to ask relevant questions upon receipt of such information.[53]
- The Department must continue its investigation of a respondent, even when it assigns an AFA rate in its preliminary determination, when the circumstances so demand.[54]
- The determination of an AFA rate of 114.72% is not supported by substantial evidence because: (i) Thailand is not a significant producer of the subject merchandise; (ii) Both mandatory respondents purchased primarily non-coniferous, non-tropical logs, whereas the petition is based on the purchase value of veneers. Logs and veneers vary widely; (iii) Bayley's selling prices were in line with those of Chengen and are thus corroborated by prevailing contemporaneous prices in the U.S. market.[55]

The Petitioners' Comments:

- The statute requires the Department to use "facts otherwise available" where an interested party: 1) withholds information requested by the Department, 2) fails to provide information in a timely manner or in the form requested; 3) significantly impedes a proceeding; or 4) provides information that cannot be verified.[56]
- Bayley has failed to act to the best of its ability by withholding all information about its affiliation with Shelter Forest (its largest U.S. customer) and Company D (which manufactures an input used in plywood production). Thus, the application of AFA is the only option available to the Department.[57]

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[49] *Id*. at 20.
[50] *See China Kingdom Imp. & Exp. Co. v. United States*, 507 F. Supp. 2d 1337 (CIT 2007) (*China Kingdom*); Bayley's Brief, at 21.
[51] *Id*. at 21-22.
[52] *Id*. at 24.
[53] *See Agro Duty Indus v. United State*s, 31 CIT 2047 (2007) (*Agro Duty*); Bayley's Brief, at 23.
[54] *Id*. at 26.
[55] *Id*. at 27-28.
[56] *See* Petitioners' Rebuttal Brief, at 16.
[57] *Id.*

- Although Bayley claims that this information was not sufficient to find affiliation, and thus not reported, this is contradicted by information submitted by Bayley's affiliates in the 2012 Plywood investigation, as well as Bayley's own statements in the instant investigation.[58]
- In the 2012 Plywood investigation, both Shelter Forest International and Yinhe M&C submitted information detailing their affiliation. The companies reported that Shelter Forest International has "complete operational control" over reported Bayley affiliate Yinhe M&C's plywood mills, and "actually coordinates the production and sales{.}"[59] Shelter Forest also submitted a sworn affidavit by its president, Ryan Loe, establishing that Yinhe M&C and others had refocused from their prior operations as independent companies and were instead assigned toward producing certain grades of goods under Shelter Forest International's "TigerPly" brand.[60] The documentation provided establishes that there was much more than a loose association between this group of companies.
- Bayley reported its affiliation with Yinhe M&C and thus had an obligation to disclose that company's affiliation with Shelter Forest International. Although Bayley claims that Shelter Forest is a new company established in 2013 and is thus distinct from Shelter Forest International, record evidence shows that this was merely a name change. Shelter Forest simply took over the plywood business from Shelter Forest International, and even the company president (Ryan Loe) moved to the new company.[61]
- Evidence on the record indicates that the relationship between Bayley and Shelter Forest continued. A Bayley shareholder primarily handled Yinhe M&C's plywood business and founded Bayley to continue plywood production. Shelter Forest's 2016 product brochure lists this Bayley shareholder as Shelter Forest's Vice President of Production. Moreover, that brochure indicates that the Bayley shareholder and Shelter Forest president Ryan Loe have a global supply chain partnership sourcing logs from Shensen Forestry, a reported Bayley affiliate.
- Moreover, while Bayley describes Yinhe M&C as separate, unrelated ventures due to different views about the company between shareholders, this claim is not supported by record evidence.[62] Although Yinhe M&C stopped the production of plywood at the time of the formation of Bayley, it is likely that Yinhe M&C's "abandoned" equipment was instead used by Bayley.[63] Thus, Bayley and its affiliated companies are simply a continuation of the plywood business begun under Yinhe M&C.
- Despite the affiliation detailed above, Bayley failed to include any information about Shelter Forest in either its SRA or its Sections A and C questionnaire responses.

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[58] *Id*. at 17.
[59] *Id*. at 18.
[60] *Id*.
[61] *Id*. at 20.
[62] *Id*. at 22.
[63] *Id*. at 23.

- While Bayley argues that it was not afforded an opportunity to correct deficiencies in its questionnaire responses, the untimely information submitted by Bayley after the rebuttal deadline was properly rejected.[64] Bayley was given an opportunity to fully rebut information regarding affiliation placed on the record by the petitioners, but it failed to do so in a timely manner.
- As found in numerous cases, verification of Bayley is not required, as the Department relied on unrebutted evidence justifying the use of total AFA.[65]
- Bayley is incorrect in stating that the Department rejected Shelter Forest International's claim that it was affiliated with three Chinese producers including Yinhe M&C.[66] Instead, the Department did not evaluate these claims, as it does not consider such claims during respondent selection, and the issue is moot because Shelter Forest International was not selected a mandatory respondent.

Department Position: The Department continues to apply AFA for the final determination. As discussed in greater detail in the *Preliminary Determination*, by not disclosing the full extent of its affiliations as required by the questionnaire, Bayley failed to cooperate by not acting to the best of its ability to comply with our requests for information. Thus, the application of AFA pursuant to section 776(b) of the Act is warranted.

On March 20, 2017, the petitioners provided information indicating that that Bayley's operations, as well as those of other Chinese hardwood plywood producers, are being directed and controlled by a U.S. company, Shelter Forest.[67] Based on these and other facts on the record of this investigation, we find, as AFA, that there is affiliation between Bayley and Shelter Forest that should have been reported to the Department, along with the information provided regarding the company's other affiliates. By not reporting these affiliated companies, Bayley failed to provide correct information regarding the company's total sales, and the Department is unable to rely on Bayley's reported sales information for purposes of calculating a dumping margin. The failure to provide information critical to the calculation of an accurate margin has impeded the investigation. The weight of the record evidence leads us to this conclusion. The petitioners have provided ample documentation in support of their allegations, including, from Plywood I: Company A's separate rate application, Shelter's collapsing request, and two promotional brochures from Shelter. Notably, Shelter's collapsing request contains an affidavit from Mr. Ryan Loe, who at that time was identified as the president of Shelter Forest International, detailing his company's relationship with its Chinese suppliers.

Although Bayley argues that the Department erred in finding affiliation because Shelter Forest and Shelter Forest International are not the same company, we disagree. Whatever business transition and/or change of name took place does not outweigh the fact that, during this POI, Shelter Forest materially directed and controlled operations of certain Chinese hardwood

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[64] *Id*. at 27.
[65] *Id*. at 30.
[66] *Id*. at 31.
[67] *See* Petitioners' Letter to the Department re: Petitioners' Comments on Bayley's Questionnaire Responses, dated March 20, 2017 (The Petitioners' Affiliation Comments).

plywood producers/exporters, including Bayley. In response to the Department's questionnaires, Bayley was required to report all of its affiliates.

At the *Preliminary Determination*, the Department examined Internet cached copies of two Shelter promotional brochures – one of which was issued in May 2015, and one of which was issued in December 2015, for distribution in 2016.[68] The information contained therein indicates that the relationship between Shelter and its associated Chinese producers, including Bayley, has only deepened since the Plywood I investigation. According to the 2016 promotional brochure, Shelter had expanded its operations to cover five mills, as opposed to three mills in 2012, and the company has created a "vertically integrated supply chain utilizing five top tier manufacturing facilities throughout China, managing the entire supply chain from manufacturing to final delivery."[69] Among its supply chain, Shelter Forest identified "Bayley Wood" as a new TigerPLY production facility, and goes into great detail about the company's establishment.[70] The catalog also identifies a supply relationship with a supplier of inputs used in the production of subject merchandise, Company C, which was identified as an affiliate of Bayley by virtue of common shareholding.[71] Lastly, the 2016 brochure twice states that, at least as early as December 2015, Person A was now also the Vice President of Production for Shelter Forest.[72] Although Bayley contends that these cached copies are inherently unreliable, the nature of a cached document is such that the file was previously present on the website and thus publicly available.

Furthermore, the Department does not agree with Bayley's argument that the Department was obligated to issue a deficiency letter or supplemental questionnaire to it or its affiliates. First, Bayley's decision not to report the full extent of its affiliations was inconsistent with the instructions in the Department's questionnaire, which clearly directed Bayley to report all affiliated companies. Bayley failed to provide complete information regarding affiliation on multiple occasions, including its separate rate application, Section A questionnaire response, and Section A supplemental questionnaire.[73] Although Bayley argues that the Department declined to investigate Bayley's corporate affiliations, it ignores that the Department endeavored to do just that by issuing these initial and supplemental questionnaires. Bayley is in essence arguing that the Department should have provided the company additional opportunities to report the information that the Department had originally requested in these questionnaires once the weight of the evidence on the record indicated that Bayley had not reported all of its affiliations. Furthermore, Bayley had ample opportunity to submit factual information rebutting the petitioners' claims regarding affiliation, but it failed to do so. Pursuant to 19 CFR 351.301(c)(1)(v), Bayley was permitted a full seven days to submit factual information to rebut, clarify, or correct the factual information submitted by the petitioners. While Bayley now argues that it should have been granted an additional chance to file information regarding its affiliations,

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[68] *Id*. at Exhibits 6 and 7.
[69] *Id.* at Exhibit 7.
[70] *Id*.
[71] *See* Bayley February 13, 2017 AQR, at Exhibit A-2.
[72] *See* Petitioners' Affiliation Comments, at Exhibit 7.
[73] *See* Letter from Bayley, re "Section A Questionnaire Response," dated February 13, 2017 at 14-17; Letter from Bayley re: "Hardwood Plywood Products from the People's Republic of China: Separate Rate Application," dated January 13, 2017, at 17; Letter from Bayley re: "Supplemental Section A Response," dated March 9, 2017, at 4.

the regulations clearly provide "one opportunity."[74] Additionally, the cases cited by Bayley to support its argument that the Department was required to send a deficiency questionnaire were cases that involved minor reporting deficiencies in which it was determined that the respondents were not given a sufficient opportunity to respond.[75] Bayley's omission in this case went well beyond such minor deficiencies, and instead involved a complete failure to report certain affiliated parties.

With regard to Bayley's contention that the Department must verify the information it submitted, we disagree. When a party submits substantially deficient responses, the Department is under no obligation to use this information.[76] Under these circumstances, there is no requirement to verify the information.[77] If a respondent provides substantially incomplete questionnaire responses and the Department must then base the company's rate entirely on facts available, as in this case, then verification is "meaningless."[78]

As discussed above, without complete information about the company's affiliations, the Department is unable to rely on the information submitted by Bayley. Bayley had several opportunities to reveal the extent and nature of its related parties and has failed to do so. Because of this, we continue to find that Bayley failed to cooperate by not acting to the best of its ability to comply with our requests for information, and AFA pursuant to section 776(b) of the Act is warranted.

Regarding Company D, there is publicly available information from the companion countervailing duty investigation which indicates that in this antidumping investigation, Bayley failed to report an additional affiliate, Company, D that manufactures an input used in hardwood plywood production.[79] While Bayley argues that it reported all suppliers in this antidumping investigation, this does not change the fact that Company D represents an affiliate that should have been reported. By not reporting Company D on the record of this investigation, Bayley has withheld necessary information that was requested.

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[74] *See* 19 CFR 351.301(c)(1)(v).

[75] *See Agro Duty,* 31 CIT 2047(finding that failing to disclose an agreement regarding cash advances is not sufficient to show that an importer has not cooperated to the best of its ability); *China Kingdom,* 507 F. Supp. 2d 1337 (finding that a respondent's mistake in attributing data to the period of a prior review does not warrant disregarding all subsequent submissions).

[76] *See* section 782(e) of the Act which provides that the Department should use information submitted by interested parties even if the information does not meet all applicable requirements but only when, *inter alia*, "the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination …."

[77] *See Galvanized Steel Wire from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17430 (March 26, 2012) and accompanying Issues and Decision Memorandum, at 11.

[78] *Id*.

[79] *See Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 19022 (April 25, 2017) and accompanying Issues and Decision Memorandum, at 27.

Although Bayley argues that the AFA rate of 114.72% is unreasonable, we find this argument to be moot because the AFA margin is no longer based on the Petition rate, and we are not using this rate to calculate a final dumping margin for the PRC-wide entity, of which Bayley is a part.

Comment 2: Valuation of Raw Material (Logs) or Intermediate Input (Veneers)

Chengen's Comments:

- The Department should not adopt the petitioners' request to use an intermediate input methodology to value respondents' costs of production for the final determination.[80] The Department's normal practice is to value a respondent's costs of production as the respondent experiences them.[81]
- All case precedent supports the position adopted by the Department in the Preliminary Determination; no precedent supports the petitioners' extreme position on the intermediate methodology.[82] The plywood industry, including Chengen, does not suffer from the infirmity of the growing factor documentation that plagued cases such as *Fresh Garlic from China*, *Honey from China*, *Mushrooms from China*, and *Fish Fillets from Vietnam*.[83] These cases involved procedures over long periods of time with numerous inputs and labor hours that are difficult to measure and document.[84] Comparing the procedures of growing fish or tracking the costs of bees and pollen and bee keeping hours over time, is completely different than the relatively brief, straightforward procedure of purchasing logs and converting them into veneer.[85]
- The nonagricultural cases cited by the petitioners in support of the intermediate input methodology are also distinguishable.[86] In *CTL Plate from China*, the Department relied upon the intermediate input methodology because the FOP/input data for minor inputs (gases) was untimely and lacked consistency.[87] Here, Chengen's log inputs were timely reported and are its main input to production of the subject merchandise.[88]
- In *Wooden Bedroom Furniture from China (2004)*, the Department relied upon the intermediate methodology not because the respondent's records for log consumption were poor but rather because the surrogate financial statement demonstrated no evidence that it processed logs into lumber and would have understated capital costs.[89] In this case, where the Romanian financial statement is that for a fully integrated producer that does convert logs to veneer, the use of the intermediate methodology would create the very disharmony between Chengen's reporting and the surrogate's production experience that renders the margins less accurate.[90] Thus, use of Chengen's log consumption is

[80] *See* Chengen's Rebuttal Brief, at 1.
[81] *Id.* at 5.
[82] *Id.* at 9-10.
[83] *Id.* at 10.
[84] *Id.* at 8.
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.* at 9.
[89] *Id.*
[90] *Id.*

required because it matches the surrogate's experience and yields the most accurate margin calculations.[91] *Hot-Rolled Carbon Steel from China* also supports the use of Chengen's log factors or production (FOPs) because, in that case, the Department applied the intermediate methodology because the respondent was vertically integrated to self-generate electricity and some gases, but the surrogate was not vertically integrated.[92]

- In *MultiLayered Wood Flooring from China* (*MLWF from China*), if the respondent starts from logs or sawn wood (before turning them into plywood, applying a face and back veneer, sawing the plywood into slats for finished pieces of flooring), then the Department starts from those primary raw materials, *i.e.*, the logs or sawn wood.[93] This "standard" practice has been applied for five segments of *MLWF from China* and no respondent in any segment has had any difficulty reporting, verifying, and reconciling its costs and cost build-ups.[94] In *MLWF from China*, the respondent Penghong had an extremely complex stage-by-stage build-up from the various wood raw materials (*e.g.*, log, sawn wood) to its plywood production for wood flooring that was also supported by warehouse in/out slips and monthly ledgers.[95] The same documents and procedures in *MLWF from China* are at issue in this case.[96]
- The petitioners erroneously argue that Department must consider "if valuing the intermediate input for the production of subject merchandise will lead to a more accurate result."[97] However, the intermediate input analysis requires a threshold evaluation of adequate consumption and purchase records, and the petitioners erroneously spin the test as a comparative accuracy test.[98]
- The petitioners argue that Chengen must have underreported log consumption and yield loss because it did not account for the bark.[99] However, the Department observed and verified that Chengen measures/pays for the logs it purchases based on the diameter "inside" the bark and thus, because Chengen did not measure from or purchase the bark, it has nothing to do with its reported yield ratio.[100] Chengen reported log loss at each stage of production: log conversion, veneer processing, and plywood production.[101] If that loss is aggregated, the log loss is in fact significantly higher, approximately double, the rate that the petitioners argue is unacceptably low.[102]
- Another major flaw in the petitioners' theory that Chengen underreported log consumption and yield loss, apparently sourced from their own less efficient production methods, is their notion that "a large portion of veneers are not suitable for hardwood

[91] *Id.*
[92] *Id.*
[93] *Id.* at 6.
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.* at 7.
[98] *Id.*
[99] *Id.* at 10.
[100] *Id.*
[101] *Id.* at 11.
[102] *Id.*

plywood production."[103] However, in the Chinese industry, there are few core and face veneers that are not suitable for production.[104]

- The petitioners' argument that inbound log volumes are understated by virtue of the measurement of the smaller (top) diameter of the tree log is incorrect.[105] It is true that the diameter was measured by the smaller end (top end measure) as in the industry standard, but the Department verified that the company recorded the log volumes by relying on a conversion formula and diameter and volume tables, per the Chinese National Standard.[106] Accordingly, there was no such underestimation of log volumes.[107]
- The Department verified that the veneers are recorded into inventory at Chengen's veneer warehouse based on nominal measures (*i.e.*, a veneer cut to a standard thickness, length, and width is deemed to have a fixed volume in cubic meters).[108] So, in fact, as the log-input volumes are calculated from actual measurements and veneers are recorded based on nominal volume, it is the log inputs that are the most accurate measures of consumption; not vice versa.[109]
- The petitioners fault Chengen's log purchase records for the farmers' failure to provide invoices.[110] It is true that, unlike birch or eucalyptus logs, the farmers did not issue invoices for poplar logs, but they cannot do that as individuals for the selling of poplar logs as agricultural products in the normal business.[111] However, as a matter of practice, Dongfangjuxin (Chengen's affiliated producer) provided receipts to those suppliers, as observed and verified, which were tied to Chengen's accounting records and materials ledgers.[112]
- Chengen reported according to industry standards and according to the most accurate possible method, hypothetically or physically.[113] No producer can predetermine which logs were solely for the production of a particular quality or grade of veneers.[114] No plywood veneer peeler can predetermine which part of the logs were used for production of particular thicknesses before those logs were peeled or broken.[115]
- There is no way to report the FOP by grades, regardless of the detail of a company's records.[116] The only possible way to report the consumption ratio is evenly, using the total log consumption and output of different grades.[117] However, since the wood species would not change in the peeling or sorting production, Chengen can track the veneers and logs consumption by wood species in its warehouse journals and warehouse in and out

[103] *Id.* at 12.
[104] *Id.*
[105] *Id.* at 13.
[106] *Id.*
[107] *Id.* at 14.
[108] *Id.* at 15.
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.* at 19.
[114] *Id.* at 16.
[115] *Id.* at 19.
[116] *Id.* at 22.
[117] *Id.*

tickets, though the financial ledgers did not separate them by wood species.[118] Therefore, Chengen can report the consumption ratio by wood species, as it did in the FOP reporting in reliance upon its inventory in and out slips, warehouse journal and other standard accounting ledgers.[119]

- The petitioners also asserted that the company claimed that it did not track which veneers were sold and which were kept for its own use.[120] All graded face veneers were entered into the warehouse journal and its production daily reports, and the company recorded them as output of face veneers, whereas it did not include those unusable veneers as output of veneers in the normal business of operation.[121] As the company indicated, the company normally sold the higher grade of face veneers, but the lowest grade of face veneer can be used for its own plywood production.[122]
- Chengen did maintain extensive production records, including warehouse-in tickets, warehouse-out tickets, production daily reports, material ledgers, *etc.*[123] These records were all crosschecked, and agreed to and with each other, and were fully verifiable and verified by the Department, as noted above, without discrepancy.[124] As the company recorded its costing on a stage-to-stage basis, the Department actually did verify production and consumption stage-by-stage and thus reconciled them into the audited financial statements.[125]
- The petitioners overstate that Chengen relied on bills of materials (BOMs) to calculate its cost of production.[126] Rather, the purpose of the BOMs in this industry is as a kind of assembly instruction for production, rather than a kind of material consumption guideline.[127] The company partially relied on the BOMs for FOP build-up purposes *solely* for this investigation, because the company did not separate various CONNUM components in its normal business accounting but rather allocated them evenly by cubic meters, regardless of the different thicknesses of plywood.[128] Chengen did not rely upon the BOMs to calculate its cost of production in the normal course of business.[129]
- The petitioners took no issue with other factors, such as glue and labor, that were built up or documented in similar ways to the logs.[130]
- If the intermediate methodology were applied, those consumption ratios or FOP would be less accurate because the calculated veneers consumption was calculated per the nominal thickness, length and width in the normal business of operation by Chengen.[131] On the other hand, if no intermediate methodology were applied, it would be more accurate to

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[118] *Id.*
[119] *Id.*
[120] *Id.* at 23.
[121] *Id.*
[122] *Id.* at 23-24.
[123] *Id.* at 24.
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Id.*
[129] *Id.* at 25.
[130] *Id.* at 25-26.
[131] *Id.* at 27.

combine these two stages (from logs to veneers and from veneers to plywood) of FOPs together and back those veneer FOPs into log FOPs.[132] The intermediate calculations in relation with the stages of (1) veneers between log to veneers and (2) veneers to plywood would be neutralized, regardless of what kind of nominal formula were used to calculate the veneers in cubic meters.[133]

The Petitioners' Comments:

- The Department should apply its intermediate input methodology in the final determination and calculate normal value (NV) based on the FOPs for veneer consumption.[134] Chengen simply does not maintain records that would allow it to quantify, report, and substantiate log FOPs accurately because it does not record the true amount of logs consumed, uses an inaccurate yield conversion ratio to calculate the FOPs, and does not record the grade of the logs consumed or the veneers it produces.[135] Consequently, the reported FOPs combined with the log surrogate value do not account for significant cost elements and would be less accurate than the veneer FOPs, which do not have these inaccuracies.[136] Therefore, the Department should value the veneer FOPs, which would result in more accurate NV calculations and dumping margins.[137]
- The petitioners submit that just because a respondent has production records and those records can be verified to exist, does not mean that those records result in the most accurate FOPs.[138] Indeed, the problem with the documentation used by Chengen to report its FOPs is not that the information does not exist or cannot be verified.[139] Rather, Chengen's records result in log FOPs that are less accurate than veneer FOPs because the veneer FOPs are not dependent on a yield ratio and do not require an analysis of the grades of veneers suitable for production.[140]
- In determining whether to apply the intermediate input methodology, the Department must determine "if valuing the intermediate input for the production of subject merchandise for the subject merchandise will lead to a more accurate result than valuing the individual FOPs."[141]
- In the cases cited by Chengen to support its argument that the Department's standard practice is to take into account the FOPs consumed in each stage of production when the NME respondent is an integrated producer (*i.e., Chinese Nails*, *Chinese Ball Bearings*, and *Chinese MLWF*), the Department never made a finding that the underlying FOPs were less inaccurate, which is precisely the question the Department must decide in this investigation.[142]

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[132] *Id.*
[133] *Id.*
[134] *See* Petitioners' Rebuttal Brief II, at 1.
[135] *Id.* at 1-2.
[136] *Id.*
[137] *Id.* at 2.
[138] *Id.*
[139] *Id.*
[140] *Id.* at 2-3.
[141] *Id.* at 3.
[142] *Id.* at 5.

- The veneer FOPs are more accurate than the log FOPs and should be used to calculate NV.[143] The Department has found that valuing the intermediate input yields more accurate results than valuing the individual FOPs when it determines that a respondent is unable to accurately record and substantiate the complete factor information associated with producing the subject merchandise.[144]
- The determination of whether a respondent is able to accurately record and substantiate its FOPs is a fact-specific inquiry.[145] Deficiencies that the Department has considered to conclude that a respondent is unable to accurately record and substantiate factors include: (1) not maintaining appropriate records, which would allow the respondent to quantify, report, and substantiate FOPs; (2) not accounting for many unknown variables in its books and records that may affect or influence reported FOPs; (3) not reporting the accounting for all of the relevant information to identify all of the necessary FOPs in its books and records; and (4) errors in the FOP data.[146] All of these factors play into Chengen's reporting of veneer production, and the Department should apply its intermediate input methodology in order to calculate the most accurate dumping margin possible.[147]
- Chengen lacks acceptable production records to document its veneer production, and thus it is impossible to calculate the amount of logs consumed on a product-specific basis.[148] Chengen records and bases its reported FOPs on the bare minimum of production and financial records, and thus there is simply no other information to examine or cross-check.[149] At verification, Chengen could not back up the poplar log inventory-in figures used for the yield ratio calculations with purchase invoices for the logs because Chengen claimed that the "the poplar supplier/farmers do not provide an invoice" to Chengen, which is a highly dubious claim.[150]
- Chengen's records and its reporting methodology are very imprecise, and Chengen admits the starting materials would not and cannot be shown in the cost of goods sold (COGs) in the financial statements.[151]
- The Department can overcome these deficiencies inherent in the log FOPs by using the product-specific veneer FOPs, which are based on BOMs, backed up by documentation, and actually tie to the COGs in the Chengen's financial statements.[152] In addition to having FOP data that can be cross-checked and verified to a higher degree, the veneer FOPs eliminate several other problems created by the inability of Chengen's records to account for the grades of veneers it produces and the yield ratios, which have no basis in reality.[153]

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[143] *Id.* at 6.
[144] *Id.*
[145] *Id.* at 6-7.
[146] *Id.* at 7.
[147] *Id.*
[148] *Id.* at 9.
[149] *Id.* at 10.
[150] *Id.* at 8-9.
[151] *Id.*
[152] *Id.*
[153] *Id.*

- The yield conversion ratio purported by Chengen cannot possibly account for various sources of waste in the production process, and therefore cannot be accurate.[154] Chengen's yield conversion ratio is inaccurate and impossible, and is a critical piece of information in Chengen's FOP calculations, thus proving that Chengen's reported FOPs are inaccurate.[155]
- The log volume used to calculate the yield ratio and the FOPs is fundamentally flawed and cannot be remedied.[156] The Department found at verification that the production manager calculated the quantity in cubic meters when the logs are delivered and derives this conversion based on the 2.6 meter length of the logs and diameter of the smaller end of the log.[157] Even though it might be an industry standard to use the smaller end of the log for measuring the diameter as Chengen claimed at verification, it does not change the fact that this narrower width results in an underestimation of the log volumes Chengen used in its calculations and an underestimation of the log value when applied to the surrogate values.[158] Because Chengen only records the narrower end of the log, it is impossible to determine the log's actual volume.[159] Consequently, Chengen's reported log FOPs, which are taken directly from this inaccurate log volume information, are fundamentally flawed and cannot be relied upon.[160]
- Chengen does not account for the grade of veneers it produces, and this lack of documentation could have significant effects on the reported log-to usable veneer ratio as it is impossible to determine what grades are being used for what purpose.[161] This problem does not exist with respect to the veneer FOPs because they rely on the amount of veneer withdrawn from inventory and used for production of hardwood plywood. Thus, we know with absolute certainty the exact amount of veneers used to make subject merchandise and that those veneers are in fact suitable for merchandise.[162]

Mowry Grimson Clients' Comments:

- In its verification report, the Department fully verified Chengen's log consumption, observing that it (1) "tied the inventory amounts listed in the journals to the warehouse in and out slips," (2) was able to "tie the quantities in the monthly inventory movement schedule (beginning and ending inventory, along with purchases) with the poplar and wood log raw material ledgers," (3) had received the requested accounting vouchers, (4) "tied the amounts in the poplar and wood log raw material ledgers for June to the accounting invoices for that month," (5) "tied the quantity of poplar and wood logs on the semifinished goods cost of production ledger for June 2016 back to the raw material ledger for June 2016 and confirmed that the amounts matched," and (6) "tied the semi-finished goods cost of production ledger for June 2016 to the core veneer semi-finished

[154] *Id.* at 10-13.
[155] *Id.*
[156] *See* Petitioners' Rebuttal Brief, at 33.
[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] *Id.*
[161] *See* Petitioners' Rebuttal Brief II, at 13-15.
[162] *Id.* at 15.

goods ledger and the face veneer semi-finished goods ledger for June 2016, which tied to the plywood cost of production ledger."[163]

- The Department did a thorough verification of Chengen and there is no reasonable basis to doubt the company's recordkeeping or reported FOPs.[164] Although the petitioners try to cast doubt on Chengen's records on logs, the Department found no such deficiencies during verification, and the petitioners have not provided any valid legal basis why the Department must use the intermediate input methodology in this case.[165]

Department's Position: In the *Preliminary Determination*, we stated that, pending additional information that may become available, we would continue to evaluate our preliminary decision not to apply the intermediate input methodology and to value Chengen's log inputs.[166] For the final determination, as a result of our verification findings and analysis of the arguments contained in the briefs filed on the record of this investigation, we find that Chengen failed to accurately record and substantiate the log FOPs associated with producing veneers. Therefore, the Department finds that it is appropriate to apply the intermediate input methodology and value the veneers consumed by Chengen in the production of hardwood plywood using surrogate values for veneers, rather than surrogate values for the underlying log FOPs used to produce the veneers.

The Department's general practice, consistent with section 773(c)(1)(B) of the Act, is to calculate NV using the FOPs that a respondent consumes in order to produce a unit of the subject merchandise. There are circumstances, however, in which the Department will modify its standard FOP methodology choosing to apply a surrogate value (SV) to an intermediate input instead of the individual FOPs used to produce that intermediate input.

In some cases, a respondent may report factors used to produce an intermediate input that accounts for an insignificant share of total output. When the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the resources, time, and burden such an analysis would place on all parties to the proceeding, the Department has valued the intermediate input directly using a SV.[167] Also, there are circumstances in which valuing the FOPs used to yield an intermediate product would lead to an inaccurate result because the Department would not be able to account for a significant cost element adequately in the overall factors buildup. In this situation, the Department would also value the intermediate input directly.[168]

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[163] *See* Mowry & Grimson Clients' Brief II, at 2.
[164] *Id.*
[165] *Id.* at 2-3.
[166] *See* Preliminary Decision Memorandum, at 17.
[167] *See, e.g.*, *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003), and accompanying Issues and Decision Memorandum at Comment 3 (*Frozen Fish Fillets from Vietnam*).
[168] *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 67 FR 55785 (August 30, 2002); *see also Final Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001); *Certain Preserved Mushrooms from the People's Republic of China: Final Results of First New Shipper Review and First Antidumping Duty Administrative Review*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum, at Comment 2; *see also Notice of Preliminary Determination of Sales at Less Than*

For example, in *Frozen Fish Fillets from Vietnam*, the Department determined that there were a number of problems with the upstream data from respondents, such as misreported or unreported FOPs, and that it was not possible to remediate all of these issues due to the lack of data on usage rates or the unavailability of surrogate values.[169] In *Honey from China*, the Department determined that the respondent was unable to accurately record and substantiate the complete costs associated with producing raw honey and, therefore, the Department continued to value the raw honey consumed rather the FOPs used to produce the raw honey.[170] In *Fresh Garlic from China*, the Department determined that the respondents were unable to accurately record and substantiate the complete costs of growing garlic and therefore applied the intermediate input methodology.[171]

Prior to verification, the Department understood that Chengen's raw material ledgers, inventory movement worksheets, warehouse-out slips, and accounting vouchers supported the quantity of logs that Chengen reportedly purchased and consumed during the POI.[172] At verification, however, the Department made observations that called into question the accuracy of Chengen's log purchase and consumption records, and its ability to substantiate such records.

The Department observed at verification that Chengen's reporting of the log quantity is imprecise. For example, the Department observed that (1) the logs are delivered by suppliers in batches, that all logs are purchased at the same length, and that the suppliers mark the diameter of the smaller end of each log in each batch,[173] (2) the suppliers measure the log diameter from the smaller end of the log, and that for an irregularly shaped log, the suppliers will take an average of the longest and shortest diameter of the smaller end of the log,[174] (3) the production manager spot checks the diameter of the logs reported by the suppliers upon delivery, and records the quantity of the logs purchased in cubic meters, and[175] (4) the production manager derives the log quantity in cubic meters for the batch using a Chinese National Standard conversion table and conversion formula that considers the log length, and the diameter of the smaller end of the log.[176] At verification, Chengen was unable to provide supplier invoices for its purchases of poplar log. Company officials explained that poplar log suppliers do not provide

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Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 498, 449 (January 31, 2003); *see also Frozen Fish Fillets from Vietnam*.

[169] *See Frozen Fish Fillets from Vietnam* and accompanying Issues and Decision Memorandum, at Comment 3.

[170] *See Final Results and Final Rescission of Antidumping Duty Administrative Review: Honey from the People's Republic of China*, 71 FR 34893 (June 16, 2006) (*Honey from China*) and accompanying Issues and Decision Memorandum, at Comment 9.

[171] *See Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews: Fresh Garlic from the People's Republic of China*, 71 FR 26329 (May 4, 2006) (*Fresh Garlic from China*), and accompanying Issues and Decision Memorandum, at Comment 1.

[172] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum, at 39.

[173] *See* Chengen Verification Report, at 11-13.

[174] *Id.*

[175] *Id.*

[176] *Id.*

an invoice for the sales of poplar log, but Chengen was able to provide supplier invoices for its purchases of birch and eucalyptus.[177]

We, thus, find that because Chengen's consumption calculation relies only on the diameter of the smaller end of the log and its length, and the conversion table and conversion formula used by Chengen to derive the volume of the log considers only the diameter of the smaller end of the log and its length, Chengen's derivation of log quantity is inherently imprecise. Specifically, if one were to consider a tapered cylinder and only measure the volume of a straight cylinder from the narrower end, the difference between the volume of the tapered cylinder and the straight cylinder would be completely unaccounted for in the calculation. This effect may be even more pronounced in this case because logs are not a perfect form but, rather, irregularly shaped, organic objects, where no two logs are identically shaped. Accordingly, the methodology employed by Chengen to measure its log consumption unavoidably introduces inaccuracies to the reported volume. Although Chengen claims that the Department verified that the company relied on the Chinese National standard conversion tables in the recording of the actual volume of logs,[178] there is no evidence on the record that supports Chengen's claim that the conversion table and formula used by Chengen elicits the log's actual volume, or that this conversion table and formula is the Chinese National standard. Further, the conversion table observed by the Department contains no information as to how and upon what basis the conversion formula was derived. Further, although we were able to verify Chengen's reported poplar log consumption against its own records, we were unable to cross-check Chengen's reported consumption of poplar against any third-party sources (*e.g.*, supplier invoices). This is particularly concerning to the Department because poplar log is Chengen's most significant input.

Accordingly, we determine that Chengen is unable to accurately report and substantiate its consumption of logs used to produce veneers. The ability of Chengen to accurately report and substantiate its consumption of logs is critical because an inaccurately reported log consumption quantity would undermine Chengen's entire reporting methodology for the primary raw material in this case. As the Department has done in *Frozen Fish Fillets from Vietnam*, *Honey from China*, and *Fresh Garlic from China*, we find that it is appropriate to apply the intermediate input methodology as a result of our determination that Chengen is unable to accurately record and substantiate the major inputs used to produce veneers.

We disagree with Chengen's argument that because this case involved the procedure of purchasing logs and converting them into veneers, it cannot be compared to the agricultural cases in which the Department has applied the intermediate input methodology.[179] This case did not involve the straight-forward, perfunctory purchase of a measurable product in which the respondent could immediately and accurately report the quantity of such purchase. Rather, the purchase of logs in this case was unusual in many respects. The Department observed at verification the imprecision in Chengen's measurement and reporting of logs. Indeed, the logs purchased by Chengen were of varying diameters and were sometimes irregularly shaped.[180]

[177] *Id.* at 13.
[178] *See* Chengen Brief, at 13.
[179] *Id.* at 8.
[180] *See* Chengen Verification Report, at 11 and 13.

However, the suppliers and Chengen only measured the smaller end of the log, and whether this was pursuant to industry standard or not is immaterial to whether it accurately calculates Chengen's actual consumption of logs. The diameters upon which the reported log volumes are based relied upon manual measurements by the supplier which were only spot checked by Chengen.[181] Further, when a batch of logs was purchased from a supplier, the total volume of logs purchased and reported in Chengen's records was calculated not by the supplier, but by Chengen itself.[182] The volume of logs Chengen reported was based on a table and formula that only considered the smaller diameter of the log. Although Chengen purported that the conversion table and formula it used was based on a Chinese National standard conversion, the record does not contain information as to how and upon what basis the conversion formula and table used by Chengen was derived. Finally, for poplar log, which accounts for Chengen's vast majority of log purchases, Chengen's poplar log suppliers did not provide invoices to Chengen.[183] Accordingly, the Department was unable to corroborate the volumes recorded in Chengen's records against any third-party source. In this case, the unusual circumstances surrounding the purchase and reporting of this product make it akin to the circumstances in *Frozen Fish Fillets from Vietnam*, *Honey from China*, and *Fresh Garlic from China*, wherein the Department determined the respondent was unable to accurately report and substantiate the underlying FOPs and applied the intermediate input methodology.

We also disagree with Chengen's argument that pursuant to precedents in *Hot Rolled Carbon Steel from China*[184] and *Wooden Bedroom Furniture from China*,[185] the Department is required to use Chengen's log consumption because it matches the surrogate's experience and yields the most accurate margin calculations. Chengen argues that in these cases, the Department applied the intermediate methodology to obtain a more accurate result because the respondent was an integrated producer, but the surrogate was not integrated.[186] Chengen argues that here, because the surrogate is an integrated producer like Chengen, the Department will obtain a more accurate result by relying on its log consumption.[187] Chengen's argument, however, relies on the assumption that the integrated producer respondent has accurately reported its underlying FOPs. Chengen provides no citation or support for a case in which the Department found that an integrated producer respondent's underlying FOPs could not be accurately reported, yet still used the inaccurately reported underlying FOPs simply because the surrogate financial statements were for an integrated producer. Further, contrary to Chengen's assertion, in selecting a surrogate financial statement, the Department is not required to duplicate the exact production

[181] *Id.* at 11.
[182] *Id.* at 11-13.
[183] *Id.* at 13.
[184] *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001) and accompanying Issues and Decision Memorandum, at Comment 2 (*Hot-Rolled Carbon Steel from China*).
[185] *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 35312 (June 24, 2004) (*Wooden Bedroom Furniture from China*).
[186] *See* Chengen Brief, at 9.
[187] *Id.*

experience of the respondent.[188, 189] Indeed, in the *Preamble*, the Department stated that it does not believe it is appropriate to check surrogate values against the NME respondents' experience.[190]

Regarding Chengen's argument that the Department's determinations in *MLWF from China* must guide the Department's determinations in this case, we disagree. *MLWF from China* is factually distinguishable from this case in both the production process and in the respondent's FOPs. The verification reports from *MLWF from China* submitted on this record do not indicate that a standard conversion table and formula was used to calculate the volume of logs. The verification reports from *MLWF from China* submitted on this record indicate that in some instances, unlike in this case for poplar logs, the Department verified delivery notices and purchase documentation for the logs.[191] For example, in the Department's verification of Zhejiang Layo Wood Industry Co., Ltd. (Layo Wood), the Department observed delivery notices from the log suppliers.[192] The Department found that the delivery notices included the original dimensions per the supplier and the hand-written re-measured dimensions per Layo Wood's warehouse staff, along with an identifying number, for each log included in the delivery.[193] The Department observed that a copy of the delivery notice is placed with the logs in inventory and, for ease of identification, Layo Wood also places colored marks on the logs that correspond to each delivery notice.[194] The Department further observed that as the individual logs are withdrawn from inventory, the delivery notice is marked accordingly, thus enabling the company to identify the log quantity (*i.e.*, cubic meters based on the log's specified dimensions) issued from the warehouse to the face veneer workshop.[195] Unlike the Department's verification of Layo Wood in *MLWF from China*, in this case, the Department did not observe any third-party source documentation regarding the quantity of logs purchased. The Department also did not observe the same level of precision of log quantity consumption tracking that was observed in Layo Wood's verification.

Further, in *MLWF from China*, the companies purchased logs, sawn lumber, and veneers in the production of the flooring.[196] However, because the record here does not indicate what proportion of the respondents' flooring production in *MLWF from China* was comprised of self-produced veneers, sawn lumber, or purchased veneers, we are unable to conclude that the facts, and the consequent effect on the FOPs, are analogous to this case where the respondent's entire production is based on self-produced veneers. Because the production of self-produced veneers is 100 percent in this case the intermediate input methodology will result in a more accurate NV calculation than the valuation of log FOPs.

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[188] *See Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999), citing *Nation Ford Chem. Co. v. United States*, 985 F. Supp. 133, 137 (CIT 1997).
[189] *See* Comment 3, *supra*, for the Department's discussion of surrogate financial statements.
[190] *Antidumping Duties; Countervailing Duties: Final Rule,* 62 FR 27296, 27367-68 (November 25, 1998) (*Preamble*).
[191] *See* Letter from Bayley re: "Hardwood Plywood Products from the People's Republic of China: Rebuttal to Petitioners' March 20, 2017 Comments on Bayley's Questionnaire," dated April 3, 2017 at Exhibits 3 and 4.
[192] *Id.*, at Exhibit 3, Pg. 14.
[193] *Id.*
[194] *Id.*
[195] *Id.*
[196] *Id.*

Regarding Mowry & Grimson's clients' argument that the Department fully verified Chengen's log consumption documentation, at issue in this case is the imprecision of the information being reported to, and recorded in, Chengen's log purchase documentation.[197] The Department's determination to apply intermediate input methodology was based upon information observed at verification, which is described above, regarding the imprecision and inaccuracies in Chengen's underlying recording and reporting practices of the logs, and the absence of corroborating third-party information. Although we observed and verified Chengen's process for tracking and recording its consumption of raw materials in the normal course of business as reported to the Department, and those practices may be sufficient for Chengen's accounting and reporting purposes as a general matter, that does not require that the Department deem those practices sufficient for reporting purposes in antidumping duty proceedings.

Finally, Chengen argues that because the veneers are recorded into inventory at Chengen's veneer warehouse based on nominal measurements (*i.e.*, a veneer cut to a standard thickness, length, and width is deemed to have a fixed volume in cubic meters), whereas the log-input volumes are calculated from actual measurements, the log inputs are the most accurate measures of consumption.[198] First, we disagree that the log input volumes are calculated from actual measurements, as explained above, because we find that Chengen's calculation and reporting of log volume is inherently imprecise. Second, although the veneers may be based on nominal measurements, those nominal measurements are based on the settings of a mechanical process which is designed to produce consistent and reliable measurement results. In contrast, Chengen's log-reporting system uses measurements of the unpredictable growth of organic materials, measured only at the smallest end, and subjected to calculations and standards not mentioned on the record until discovered at verification. Accordingly, we find that the nominal measurements of veneers, which are rectangular and uniformly shaped products of standard dimensions from machines designed to produce consistent results, are inherently more accurate than the imprecise and approximate measurements of varying and irregularly shaped logs.

Chengen and the petitioners raise and rebut other arguments regarding underreported log consumption, the tracking and recording of veneer grades and reporting of FOPs by veneer grade, the BOMs, and log pricing data.[199] However, in light of our determination that the intermediate input methodology is appropriate in this case, we find these arguments to be moot.

Comment 3: Selection of Surrogate Country

The Petitioners' Comments:

- The Department should select Thailand as the primary surrogate country because it offers the best surrogate values.[200] There are two Thai financial statements from actual hardwood plywood producers compared to one Romanian producer of standard

[197] *See* Mowry & Grimson's Clients' Rebuttal Brief II, at 2.
[198] *See* Chengen Brief, at 15.
[199] *See e.g.*, Chengen's Brief, at 19-27; *see also* Petitioners' Rebuttal Brief II, at 8-15.
[200] *See* Petitioners' Rebuttal Brief II, at 22.

plywood.[201] Thailand has better and more complete log surrogate values, should the Department chose to value the log FOPs.[202] Thailand has been found to be economically comparable to China, and the record demonstrates that during the POI, Thailand was not only a significant exporter of subject merchandise that is identical and comparable to the merchandise under consideration, but offers a more robust hardwood plywood industry.[203] All of the surrogate values for Thailand pertaining to material inputs and energy inputs are fully contemporaneous with the POI.[204]

- Although respondents have critiqued the validity of Thailand as a viable source of surrogate values because the vast majority of hardwood plywood produced in Thailand is of a "tropical" variety, the fact remains that tropical hardwood is merchandise specifically encompassed within the scope of this antidumping investigation.[205]

Chengen's Comments:

- In the *Preliminary Determination*, the Department properly found that Romania provided the best available information to value the main raw materials and financials.[206]
- The petitioners' contention that Thailand is not only a significant exporter of identical merchandise, but offers a more robust hardwood plywood industry lacks merit.[207] Thailand is not a significant producer or exporter of plywood.[208] For example, in 2016, Thailand exported a mere 447,002 kilograms under HTS 4412, whereas Romania exported 75,767,071 kilograms, and Thailand produces a mere 120,000 cubic meters of plywood annually while Romania produces 670,000 cubic meters.[209]
- Even if the Department maintains that due to the presence of any exports, Thailand and Romania are both significant producers, the Department must still consider the relative significance of the two countries.[210] Romania is a far more significant producer of plywood than Thailand, and as a major exporter of plywood, Romania has a significant impact on world trade in plywood.[211]
- Thailand's plywood production is critically less comparable than Romania's plywood production. Thailand produces only tropical hardwood plywood.[212] While the petitioners make much of the fact that tropical plywood is within the scope, the respondents have never argued that tropical hardwood plywood is outside of the scope of the investigation. However, the fact remains that the vast majority of subject plywood being exported to the United States from China is non-tropical hardwood plywood.[213] Further, the respondents

[201] *Id.*
[202] *Id.*
[203] *Id.*
[204] *Id.* at 23-24.
[205] *Id.* at 22-23.
[206] *See* Chengen's Rebuttal Brief, at 29.
[207] *Id.*
[208] *Id.*
[209] *Id.* at 30.
[210] *Id.*
[211] *Id.*
[212] *Id.*
[213] *Id.*

produce only non-tropical plywood, and 85% of the plywood produced in Romania falls into this category (non-coniferous, non-tropical).[214]

- Thailand is not a significant producer of plywood generally, but it also does not produce the same type of plywood as produced by both mandatory respondents or 90% of the exports to the United States.[215] The Department is directed to rely on surrogate values from a country that is a significant producer of comparable merchandise.[216] Romania is the most significant producer on the record and produces the most comparable merchandise among potential surrogate countries.[217] Not only could these factors impact the Department's analysis of the significant producer criteria for a surrogate country, but it has meaningful impact on the availability of quality specific data.[218] As seen in the Department's preliminary decision, Romania sourced critically more specific data than Thailand.[219]

Mowry Grimson Clients' Comments:

- Thailand is not a significant exporter of comparable merchandise.[220] Thailand exports mostly tropical plywood and the Thai financial statements are not contemporaneous with the period of investigation.[221] Each of these flaws provides a lawful basis for the Department to reject Thailand as the surrogate country.[222]
- In the preliminary determination, the Department noted a further critical flaw in the Thai data — the lack of a contemporaneous Thai surrogate financial statement.[223] Yet, the petitioners fail to address this issue in their case brief.[224]

Department's Position: We continue to find, as we did in the *Preliminary Determination*, that Romania is the appropriate primary surrogate country for this investigation because Romania has more specific data to value Chengen's FOPs. Specifically, the financial statement for Romania on the record is contemporaneous with the POI and indicates that it is for a producer of identical merchandise: beech plywood. Conversely, the two financial statements for Thailand on the record are not contemporaneous with the POI and indicate that they are for producers of only comparable merchandise: veneer sheets and other related products, and teak furniture and other teak products. Therefore, we disagree with the petitioners that Thailand offers the best surrogate values because the record indicates that Romania is a producer of identical merchandise, plywood, whereas Thailand is a producer of only comparable merchandise, furniture and veneer sheets, and the record contains a useable financial statement from Romania.

Chengen and the petitioners have also made arguments and rebuttals concerning wood log surrogate values. Because the Department has determined to apply the intermediate input

[214] *Id.*
[215] *Id.*
[216] *Id.*
[217] *Id.*
[218] *Id.*
[219] *Id.*
[220] *See* Mowry & Grimson Clients' Rebuttal Brief II, at 3.
[221] *Id.*
[222] *Id.*
[223] *Id.*
[224] *Id.*

methodology to value Chengen's costs of production for the final determination, as discussed in "Section V" and Comment 2, *supra*, these arguments are now moot and the Department is not addressing them.

Comment 4: The Department's Limited Selection of Mandatory Respondents and Denial of the FEA Group's Request for Voluntary Respondent Status

FEA Group and Separate Rate Applicants' Comments:

- The Department's determination to deny FEA Group's request for voluntary or replacement respondent status was unsupported by substantial evidence, contrary to law, and/or arbitrary and capricious.[225]
- The Department's explanation for why selecting a voluntary respondent would be unduly burdensome was not supported by substantial evidence.[226]
- The Department stated several reasons why the investigation was complex, including that additional questions may need to be asked of the mandatory respondents regarding their affiliations, the large number of factors of production (FOPs) in this case, and lack of experience with the two mandatory respondents.[227] However, these reasons turned out to not be valid because the Department effectively stopped reviewing and issuing supplemental questionnaires to Bayley three months prior to the preliminary determination, plywood is a simple product that is largely comprised of wood and glue, and the FEA Group was not new to the Department and was fully investigated and verified in the prior plywood investigation.[228] The Department anticipated two verifications, but because it refused to verify Bayley, the Department was not unduly burdened by the requirement of an additional verification.[229]
- The Department knew at, if not prior to, the antidumping and countervailing preliminary determinations that it would assign a total AFA rate to Bayley, and it had adequate time to consider an additional mandatory respondent.[230]
- The Department's interpretation of the voluntary respondent statute rendered it a nullity in this case.[231] The Department should have, and still should, individually examine a voluntary respondent.[232] FEA Group requested treatment as a voluntary respondent at the outset of this investigation, and timely filed its Section A, C, and D responses.[233] There is a full set of surrogate values on the record for all of the FEA Group's inputs, which overlap with those of the mandatory respondents, who have submitted extensive surrogate value data.[234]

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[225] FEA Group Brief, at 1.
[226] *Id.*
[227] *Id.* at 7-9.
[228] *Id.*
[229] *Id.* at 8-9.
[230] *Id.* at 10-11.
[231] *Id.* at 9.
[232] *Id.*
[233] *Id.* at 3.
[234] *Id.* at 4.

- The Department has, in recent practice, systematically limited its individual examination to two mandatory respondents in investigations and reviews.[235] This minimum number of mandatory respondents is unreasonably low because there is no measure of safety for separate rate applicants.[236] Even if one mandatory respondent is assigned total AFA or partial AFA, then the separate rate applicants risk being severely penalized by no fault of their own when they fully cooperated throughout the investigation.[237] Alternatively, if there is a coopering mandatory respondent rate in excess of *de minimis*, then the separate rate is still merely based on a sample of one.[238]
- In *Husteel*, the Court found that it was improper for the Department to ignore the facts that the two selected mandatory respondents were not representative of the industry due to the manner of the production process they employed.[239] Likewise, in this case, the Department ignored the facts that one selected respondent, Bayley, was not representative of cooperating exporters.[240]
- In *Husteel*, *Zhejiang Native Produce*, and *Carpenter Technology*, the Court rejected the Department's argument that it could review no more than two mandatory respondents on the basis of resource constraints or that the number of producers/exporters in an investigation is "large."[241]

The Petitioner's Comments:

- The Department should reject the FEA Group's claims that the Department unlawfully chose not to review the FEA Group as either a voluntary respondent or "replacement" mandatory respondent.[242]
- As even the FEA Group itself concedes, the Act provides the Department with greater flexibility regarding the inclusion of voluntary respondents.[243] The Department's decision not to examine the FEA Group as a voluntary respondent was reasonable and in accordance with the law.[244] This investigation involved complex issues that required significant analysis of the mandatory respondents' questionnaire responses, including issues concerning affiliates and factors of production.[245] The Department was also faced with 79 separate rate applications, extensive comments on the scope of the investigation, and extensive comments on the product characteristics to be used for reporting purposes.[246] Regardless of the agency's decision to apply AFA to Bayley and not verify the company, the Department was

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[235] *Id.* at 11.
[236] *Id.*
[237] *Id.*
[238] *Id.*
[239] *Id.* at 10 (citing *Husteel Co.v. United States,* 98 F. Supp. 3d 1315, 1329 (CIT 2015) (*Husteel*)).
[240] *Id.*
[241] *Id.* at 12 (citing *Husteel*, *Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp. v. United States,* 637 F. Supp. 2d 1260, 1263-1264 (CIT 2009) (*Zhejiang Native Produce*) and *Carpenter Technology Corporation v. United States,* 662 F. Supp. 2d 1337, 1343-44 (CIT 2009) (*Carpenter Technology*).
[242] Petitioners' Rebuttal Brief, at 2-3.
[243] *Id.* at 33-34.
[244] *Id.* at 34.
[245] *Id.*
[246] *Id.* at 34-35.

justified in choosing not to review the FEA Group as a voluntary respondent based on its resource constraints.[247]

- In disputing the agency's analysis of the complexity of this investigation, the FEA Group provides almost no support for its assertions, relies on its own information (that has neither been examined nor verified), and ignores the additional complexities cited by the agency, including the separate rate applications, scope comments, and product characteristics comments.[248] The FEA Group unfairly minimizes the Department's analysis of Bayley.[249]
- The FEA Group does not deny that the Department did not have prior experience with the two mandatory respondents, but instead resorts to the irrelevant statement that the Department had experience with the FEA Group in an entirely different, past proceeding.[250]
- The office responsible for this investigation is simultaneously involved with numerous cases, including investigations, administrative reviews, and/or new shipper reviews, resulting in significant workload and coinciding deadlines.[251] Under these circumstances, individually reviewing the FEA Group would have created an undue burden and compromised the timely completion of this investigation.[252]
- The FEA Group's assertion that the Department had enough time to examine the company as a mandatory respondent is incorrect and should be rejected.[253] In *Husteel*, the Court acknowledged that an investigation involves statutory deadlines that are shorter than the deadlines for completing a review, and that "Commerce has more work to do in less time," during an investigation.[254] This investigation in particular has involved, among other things, highly complex issues and information, multiple rounds of supplemental questionnaires and extensive analysis, and examinations of new respondents.[255]
- The Department has broad discretion to determine the number of respondents it can reasonably investigate.[256] Here, the Department determined that "the 942 producers and/or exporters of the merchandise under consideration named in the Petition is a large number," and that "it would not be practicable in this investigation to individually examine each known exporter or producer."[257] In making its determination, the Department cited the state of its available resources and a number of concurrent antidumping and countervailing duty proceedings with overlapping deadlines."[258]
- The FEA Group argues that Bayley was not representative of cooperating exporters, but provides no reason to believe that Bayley was not representative of the industry under investigation as a whole.[259] The facts in this case are distinguishable from those underlying *Husteel* in that there is no reason to believe that Bayley's production process or the

[247] *Id.* at 3.
[248] *Id.* at 35-36.
[249] *Id.* at 36.
[250] *Id.*
[251] *Id.* at 35.
[252] *Id.*
[253] *Id.* at 40.
[254] *Id.*
[255] *Id.*
[256] *Id.* at 37.
[257] *Id.*
[258] *Id.*
[259] *Id.* at 39.

merchandise it exports to the United States is unrepresentative of the process employed or merchandise sold by other respondents.[260]

- The FEA Group's misplaces its reliance on *Husteel*, *Carpenter Technology*, and *Zhejiang Native Produce,* for the proposition that the Department is not permitted to limit its respondent selection to two mandatory respondents on the basis of resource constraints or that the number of producers/exporters in an investigation is "large."[261] As the Department stated in its Respondent Selection Memorandum, both *Zhejiang Native* and *Carpenter Technology,* unlike this investigation, involved challenges to the Department's final results of administrative reviews, rather than investigations.[262] In addition, each of the three cases concerned fewer than 10 exporters or producers, while the Department here faced 942 producers and/or exporters of the merchandise under consideration.[263]
- Furthermore, in *Husteel*, the Court held that although three to eight respondents could not be a "large" number, it explicitly held that it is reasonable to determine twelve exporters as a "large" number.[264] In this case, judicial precedent fully supports the Department's determination that the pool of 942 producers and/or exports in this investigation was "large."[265] Accordingly, the Department's determination that the number of producers and exporters involved in this case is "large," and its decision to limit its review of mandatory respondents to two companies, is proper and in accordance with law.[266]

Department's Position: For the reasons discussed in the Voluntary Respondent Memo,[267] the *Preliminary Determination*, and reiterated below, we find our determination not to select FEA Group as a voluntary respondent to be reasonable and in accordance with the antidumping law. Further, as explained below, we also disagree with the FEA Group and separate rate applicants' general argument that the Department's selection of two mandatory respondents in this investigation is unreasonable.

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted average dumping margin determinations because of the large number of exporters and producers involved in the review. Moreover, on June 29, 2015, the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 782(a) of the Act was signed into law.[268] The amendments to the Act are

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[260] *Id.* at 39-40.
[261] *Id.* at 37.
[262] *Id.* at 37-38.
[263] *Id.* at 38.
[264] *Id.* at 39.
[265] *Id.*
[266] *Id.* at 40.
[267] *See* Memorandum, "Antidumping Duty Investigation of Certain Hardwood Plywood from the People's Republic of China: Selection of Voluntary Respondent," dated April 4, 2017.
[268] *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.

applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.[269] When the Department limits the number of exporters examined in a review pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: 1) the information is submitted by the due date specified for the mandatory respondents; and 2) the number of such companies subject to the review is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the investigation. Under Section 782(a) of the Act, as recently amended by the TPEA, in determining whether it would be unduly burdensome to examine a voluntary respondent, the Department may consider: 1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by the Department; and 4) such other factors relating to the timely completion of these investigations and reviews.

On January 9, 2017, we determined, pursuant to section 777A(c)(2) of the Act, that it was not practicable to examine more than two mandatory respondents in this investigation.[270] Thus, in accordance with section 777A(c)(2)(B) of the Act, we selected as mandatory respondents the two companies accounting for the largest volume of hardwood plywood exported from the PRC during the POI (*i.e.*, Bayley and Chengen) based on Q&V data.[271] We also noted that, if we received voluntary responses in accordance with section 782(a) of the Act and 19 CFR 351.204(d), we would evaluate the circumstances in deciding whether to select an additional respondent for examination.[272]

We received a timely request from FEA Group for treatment as a voluntary respondent in this investigation, and FEA Group submitted timely responses to the Department's initial questionnaire. Although FEA Group timely submitted the information required by section 782(a)(1) of the Act, we concluded in our April 2017 Voluntary Respondent Memorandum that, pursuant to section 782(a) of the Act, it would be unduly burdensome and inhibit timely completion of this investigation to select and examine a voluntary respondent.[273] In coming to our determination, we considered the following factors, as established under section 782(a) of the Act: 1) the complexity of the issues or information presented in this investigation; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of

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See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

[269] *Id.*, 80 FR, at 46794-95. The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.

[270] *See* Memorandum, "Antidumping Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Respondent Selection," dated January 9, 2017 (Respondent Selection Memorandum).

[271] *Id.*; *see also* Memorandum, "Antidumping Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Deselection of Xuzhou Eastern International Trading Co., Ltd. as a Mandatory Respondent and Selection of Replacement Mandatory Respondent," dated January 13, 2017.

[272] *See* Respondent Selection Memorandum.

[273] *See* Memorandum, "Antidumping Duty Investigation of Certain Hardwood Plywood from the People's Republic of China: Selection of Voluntary Respondent," dated April 4, 2017 (Voluntary Respondent Memorandum).

investigations or reviews being conducted by the Department; and 4) such other factors relating to the timely completion of these investigations and reviews.[274]

In denying FEA Group's request for voluntary respondent status, we explained that the issues and information presented in this investigation are complex.[275] The complexities of this investigation are evidenced by the record. This was the first time that we reviewed Bayley and Chengen as mandatory respondents and, thus, we had to expend additional resources gaining experience with these companies' records, affiliations, and practices. Indeed, we issued nine supplemental questionnaires to Chengen and four supplemental questionnaires to Bayley in this investigation, which included numerous questions concerning their FOP reporting methodologies, database issues, and ownership and affiliation issues. In addition to the review of the mandatory respondents, the Department reviewed over 80 separate rate applicants. Equally significantly, this case involves numerous issues related to the scope of the investigation, some of which are novel and highly complex and others which arose late in the process (*i.e.*, after the preliminary determination). Indeed, due to the complexity of these scope issues and the necessity of seeking significant input from interested parties, we made three preliminary findings with respect to scope issues. One of our preliminary scope findings could not be issued until mid-October 2017, only three weeks prior to the final determination. We also noted in the Voluntary Respondent Memorandum that the Department was conducting numerous investigations and reviews during the preliminary phase of this investigation; the Department's workload has continued to increase.

Thus, we disagree with the FEA Group and separate rate applicants that our explanation as to why selecting a voluntary respondent would be unduly burdensome was not supported by substantial evidence. Although the FEA Group and separate rate applicants argue that we effectively stopped reviewing Bayley three months prior to the preliminary determination, the Department continued to receive, examine and analyze briefs and comments regarding a complex affiliation issue related to Bayley up through the final determination. Further, analysis of this issue required significant analysis of Bayley's questionnaire responses and information submitted by the petitioners. Furthermore, although FEA Group and the separate rate applicants argue that hardwood plywood is a simple product with simple FOPs, the record shows that the Department had to review numerous supplemental questionnaires, and numerous comments regarding the FOP methodology and the scope of this product.

We also disagree with the FEA Group and separate rate applicant's argument that the Department could have selected and had time to review the FEA Group as a voluntary or replacement respondent based on its submitted Section A, C, and D responses, the surrogate values on the record, and its history of being a mandatory respondent in the prior plywood investigation. Regardless of our decision not to verify Bayley, the complexities of this investigation remained. Indeed, acceptance of FEA Group as a voluntary respondent would necessarily have required a significant additional level of effort and resources, which we determined would have been unduly burdensome. It is of no moment that FEA Group was a mandatory respondent in the prior plywood investigation. This investigation is a separate, independent proceeding, with its own record, and a proper examination of FEA Group in this

[274] *Id.*
[275] *Id.*

investigation still would have required the review and analysis of its questionnaire responses, the possible issuance of multiple additional supplemental questionnaires, verification, and writing additional margin programs, analysis memoranda and verification reports specific to FEA Group. Moreover, the uncertain nature of any investigation allows for the possibility that complex situations may arise, requiring yet more time for the Department to analyze the record evidence and make determinations with respect to the issues.

Therefore, we continue to decline to select FEA Group as a voluntary respondent. We continue to find that the additional workload of individually examining a voluntary respondent would be unduly burdensome, given the Department's current resource availability, and would inhibit timely completion of this investigation.

Likewise, we also disagree with FEA Group and the separate rate applicants' general argument that we unreasonably limited the selection of mandatory respondents. We agree with the petitioners that the cases cited by the FEA Group and the separate rate applicants to support this general argument are inapposite to the facts of this case. In this case, unlike in *Husteel*, *Carpenter Technology*, and *Zhejiang Native Produce*, the Department is conducting an investigation with as many as 942 possible producers and/or exporters. Our decision to limit our investigation to two producers/exporters was appropriate under the Act and consistent with existing legal precedent.

Comment 5: Negative Critical Circumstances Finding for the PRC-wide Entity

Mowry Grimson Clients' Comments:

- The Department should continue to make a negative final critical circumstances determination with respect to Chengen and the separate rate respondents in the final determination because there have been no massive imports of the subject merchandise over a relatively short period and there is no history of dumping and material injury or evidence that the importers knew or should have known that the exporter was selling the subject merchandise at less than fair value and that there was likely material injury.[276]
- In addition, in the final determination, the Department should also make a negative determination for the PRC-wide entity.[277] The Department should, in particular, take notice of the updated shipment data and seasonality arguments provided by the respondent parties earlier in this investigation.[278]

The Petitioners' Comments:

- Without citing to any specific factual information, the Mowry & Grimson clients argue that the "Department should, in particular take notice of the updated shipment data and seasonality arguments provided by the respondent parties earlier in this investigation."[279]

[276] *See* Mowry & Grimson Clients Brief II, at 2.
[277] *Id.*
[278] *Id.*
[279] *See* Petitioners' Rebuttal Brief II, at 2.

Contrary to the respondents' implications, the Department routinely finds critical circumstances for the PRC-wide entity when it fails to participate, as it did in the preliminary determination.[280]

- With respect to the PRC-wide entity, the Department followed its well-established practice of applying AFA where a party has refused to cooperate to the best of its ability (*i.e.*, by not submitting a questionnaire response pursuant to a Department request).[281] The Department was more than justified in finding that critical circumstances exit with respect to the PRC-wide entity and should continue to find that critical circumstances exist for the PRC-wide entity in its final determination.[282]
- The Department should reject the Mowry & Grimson clients' arguments with respect to seasonality.[283] While the respondents argue that there is seasonality in the shipment for hardwood plywood, the Department's analysis of imports focused on time period preceding any seasonal surge.[284] Moreover, the respondents did not make any argument with respect to whether there is a seasonal surge or drop during the periods that the Department chose to examine, nor did the respondents assert in the brief that the periods actually examined by the Department were inappropriate or otherwise aberrational.[285]

Department's Position: We disagree with the Mowry & Grimson clients that the Department should make a negative critical circumstances determination for the PRC-wide entity. Because our affirmative critical circumstances determination for the PRC-wide entity is based on AFA, as a result of the entity's failure to cooperate to the best of its ability, the updated shipment data and seasonality arguments referenced by the Mowry & Grimson clients are not relevant to our analysis of the existence of critical circumstances for the PRC-wide entity because we have determined as adverse facts available that there were massive imports from the PRC-wide entity.[286] Therefore, we find that the critical circumstances that we preliminarily determined for the PRC-wide entity continue to exist for the final determination.

Comment 6: Whether to Treat China as a Market Economy

Mowry Grimson's Clients Comments:

- The Department is in the process of evaluating China's status as a nonmarket economy (NME) and the Department should not treat China as an NME country in the final determination.[287] China's Accession protocol to the World Trade Organization (WTO) provides that China's treatment as an NME "shall expire" fifteen years after its accession. China acceded to the WTO on December 11, 2001.[288] As of December 12, 2016,

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[280] *Id.*
[281] *Id.* at 2-3.
[282] *Id.* at 3.
[283] *Id.*
[284] *Id.*
[285] *Id.*
[286] *See* Preliminary Decision Memorandum at 8; *see also* Critical Circumstances Memorandum.
[287] *See* Mowry & Grimson Clients Brief II, at 3.
[288] *Id.*

therefore, the United States "shall" treat China as a market-economy country.[289] Accordingly, in the final determination, the Department should apply a market economy methodology, rather than NME methodology, in calculating the antidumping rates in this case.[290]

The Petitioners' Comments:

- The mere fact that it is past December 2016 does not suffice for the Department to abandon separate rate examinations or presume that Chinese companies are market economy participants.[291]
- China's Accession Protocol only delineates China's commitments to reform its economic model over a period of 15 years following 2001, the year in which China joined the WTO.[292] Other WTO members, including the US, never agreed to automatically accept China's economic model after the 15-year period.[293]
- WTO agreements, such as the Chinese Accession Protocol, have no effect on US law unless and until adopted under the proper statutory scheme.[294] Indeed, the Department in its preliminary determination set forth that the PRC here is a NME country, and the agency's treatment of the PRC as an NME country "shall remain in effect until revoked by the administering authority," pursuant to Section 771(18)(C)(i).[295] Therefore China's accession to the WTO and the passing of December 2016 in and of itself has no effect on the Department's treatment of China as a NME country because, as of yet, the US has not changed or revoked its treatment of China as a NME country.[296]

Department's Position: We disagree with the Mowry & Grimson client that the PRC's Protocol of Accession in force. The Uruguay Round Agreements (including the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994) "are not self executing" and "their legal effect in the United States is governed by implementing legislation."[297] Likewise, the PRC's Protocol of Accession is not self-executing, and does not grant direct rights under U.S. law. Instead, antidumping duty proceedings conducted by the Department are governed by U.S. law, which provides that the Department determines, on the basis of a complete, fact-intensive analysis of a country's economy, whether NME status is warranted for antidumping purposes. That determination remains in effect until it is reviewed again. In this investigation, no party requested that we review the PRC's NME status. As such, we continue to treat the PRC as an NME in this investigation, and we have made determinations that are consistent with the statute, the legislative history, and the regulations governing antidumping duty proceedings with respect to NME countries. Further, we note that the Department has recently affirmed this NME finding. Specifically, in *Aluminum Foil*, the

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289 *Id.*
290 *Id.*
291 *See* Petitioners' Rebuttal Brief II, at 4.
292 *Id.*
293 *Id.*
294 *Id.*
295 *Id.*
296 *Id.* at 4-5.
297 S. Rep. No. 103–412, at 13 (1994); *accord* H.R. Rep. No. 103–826, pt. I, at 25 (1994).

Department has determined that PRC is a NME country because it does not operate sufficiently on market principles to permit the use of prices and costs in that country for purposes of the Department's antidumping analysis.[298]

Comment 7: Whether the Department Should Grant Hanbao a Separate Rate

Baoqi and Hanbao's Comments:

- The failure of Hanbao to answer the Department's supplemental questionnaire should be excused because Hanbao did not receive the Department's supplemental questionnaire.[299] The record contains no evidence that Hanbao, in fact, received the supplemental questionnaire.[300] This fact can be confirmed by information in the sole control of the Department in the form of the log of BPI access to the supplemental questionnaire.[301] This information will establish that Hanbao never accessed or reviewed this BPI supplemental questionnaire.[302]
- The Department's issuance of the supplemental questionnaire was irregular, and the Department's irregular actions were a direct cause of Hanbao's failure to respond to the supplemental questionnaire.[303] The supplemental questionnaire at issue was issued prematurely and less than 10 days after receipt by the Department of Hanbao separate rate application (SRA).[304] This was unusually early and in variance with the regulatory scheme.[305] Section 351.301(c)(1)(v) of the Department's regulations provides a period of 14 days for the filing of comments by the petitioners on any response filed by a party, and this 14-day period had not yet run.[306] Under regularized Department practice, the Department does not issue supplemental questionnaires until the period for comment has run.[307]
- Accordingly, Hanbao's counsel would not normally anticipate a supplemental questionnaire to be issued prior to the expiration of this 14-day period.[308] While Hanbao's counsel actively monitors all cases upon which he is working, an SRA supplemental questionnaire would not have been anticipated so early in the process.[309]
- It is standard Department procedure, prior to the issuance of a supplemental questionnaire containing business proprietary information (BPI), for the Department to contact counsel for the party to whom the questionnaire is to be issued and to provide a copy of the

[298] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858 (November 2, 2017), citing Memorandum to Gary Taverman, "China's Status as a Non-Market Economy," dated October 26, 2017.
[299] *See* Baoqi and Hanbao's Brief, at 1 and 6.
[300] *Id.* at 6.
[301] *Id.*
[302] *Id.*
[303] *Id.* at 8.
[304] *Id.* at 7.
[305] *Id.*
[306] *Id.*
[307] *Id.*
[308] *Id.*
[309] *Id.*

questionnaire prior to release for comment on the BPI bracketing.[310] In this case there is no evidence of record that the Department released a copy of the questionnaire to counsel for BPI bracketing review prior to the formal issuance of the questionnaire.[311] Had this standard Department procedure been followed, Hanbao's counsel would have been aware of the supplemental questionnaire.[312]

- Because the Department played a significant part in the failure of a party to respond due to the Department's failure to follow its own established regulations and procedures, the party should not be sanctioned or punished.[313]
- The Department erroneously rejected Hanbao's June 23, 2017, submission, in which it requested that the Department re-issue its supplemental questionnaire, on the basis that it contained "new factual" information and that the argument contained therein could only be re-submitted in the case brief.[314] However, the information in question, which consisted of a discussion of certain established practices of the Department, does not fall under the definition of "factual information" in 19 CFR 351.102, and is akin to the citation of court cases, federal register notices, and issues and decision memoranda.[315]
- The Department's certification requirements establish that an additional class of factual information exists – that of information not relevant to the Department's analysis of dumping – and that such information does not constitute new factual information for the purposes of 19 CFR 351.102.[316] This category of information includes things such as Court and Administrative citations and issues and decisions memoranda, and also includes information of the type submitted by Hanbao in its June 23, 2017, submission.[317]
- Because Hanbao's June 23, 2017, submission did not contain new factual information of the type that falls within the scope of 19 CFR 351.102, the Department should not have rejected the submission and should have acted upon the request in such submission by re-issuing the questionnaire.[318]
- The Courts have held that the Department must use a standard of reasonableness in determining whether or not to hold a party responsible for an error or omission. In *Artisan Mfg. Corp.* and *Grobest*, the Court directed the Department to reconsider, and ultimately accept, certain late filings.[319] The key principles for the Department to consider are: (i) whether the party failing to file acted promptly upon learning of the omission; (ii) whether the mistake was an innocent mistake or an attempt to manipulate the data; and (iii) whether the interests of accuracy and fairness outweigh the burden (resulting from the late submission) placed on the Department and the interest in finality.[320]

[310] *Id.*
[311] *Id.* at 7-8.
[312] *Id.* at 8.
[313] *Id.*
[314] *Id.* at 3.
[315] *Id.* at 3-4.
[316] *Id.* at 5-6.
[317] *Id.* at 6.
[318] *Id.*
[319] *Id.* at 8 (citing *Artisan Mfg. Corp. v. United States*, 978 F. Supp. 2d 1334 (CIT 2014) (*Artisan Mfg. Corp.*) and *Grobest & I-Mei Indus. (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342 (CIT 2012) (*Grobest*)).
[320] *Id.* at 8-9.

- All of these principles are present in this case. Here, Hanbao's counsel could not file a response because it was unaware of the supplemental questionnaire, and was thus also unaware of the need to download the document during the limited window of availability on ACCESS.[321] The adverse consequences of this mistake are such that the only reasonable characterization of this was as an "innocent mistake."[322] Absent the re-issuance of this questionnaire, Hanbao will be lumped in with parties that intentionally did not cooperate with the Department or provided inaccurate information in their responses.[323] Placing it within the same group is fundamentally unfair and not accurate and the burden placed on the Department is also slight.[324] The Department simply needs to re-issue its already generated questionnaire and conduct the same analysis that it would have been required to conduct but for the mistake.[325]
- The Department should grant a separate rate to Hanbao because the SRA submitted, on its face, is complete and provides sufficient information to establish the separation of Hanbao from the Government of China.[326]
- The accession of China to the World Trade Organization and the expiration in December of 2016 of the period during which China was to be treated as a non-market economy, means that the Department should no longer be conducting separate rate examinations, or at a minimum, must presume that a company is a market economy participant in lieu of absence to the contrary.[327] The Department's failure to make this change resulted in the irregular issuance of the supplemental questionnaire at issue.[328] The Department, based on what should now be a presumption of market economy status, should therefore continue to assign to Hanbao separate rate status.[329]

The Petitioners' Comments:

- The Department properly found that Hanbao failed to respond to the Department's supplemental SRA questionnaire and failed to establish its eligibility for a separate rate.[330] Counsel for Hanbao has not established any good reason for the Department to depart from its preliminary determination, and the Department should continue to treat Hanbao as part of the PRC-wide entity and assign a dumping margin accordingly.[331]
- The Department's broad discretion in setting and enforcing its rules regarding administrative procedures is well established.[332] Contrary to Hanbao's suggestions, the Department has no obligation to confirm that counsel to parties physically review

[321] *Id.* at 8.
[322] *Id.* at 9.
[323] *Id.*
[324] *Id.*
[325] *Id.* at 9-10.
[326] *Id.* at 10.
[327] *Id.*
[328] *Id.*
[329] *Id.*
[330] *See* Petitioners' Rebuttal Brief, at 44.
[331] *Id.*
[332] *Id.* at 42 (citing *Yantai Timken Co., Ltd. v. United States,* 521 F. Supp. 2d 1356, 1370 (CIT 2007)).

documents that the Department provides to parties through ACCESS and for which daily digests are circulated.[333]

- Counsel for Hanbao also claims that the Department should have released a copy of the supplemental questionnaire to counsel for review of bracketing per its standard practice.[334] However, Hanbao fails to point to any regulatory or statutory provisions placing such obligations on the Department.[335]
- Counsel for Hanbao appears to have simply overlooked the supplemental questionnaire, and the lack of knowledge of the existence of the questionnaire and consequent failure to submit a timely response is entirely due to counsel's oversight.[336] Notably, while Hanbao claims that the Department is at fault for issuing the supplemental questionnaire prior to 14 days after Hanbao had submitted its original SRA, Hanbao did not request that the Department re-issue the SRA supplemental questionnaire until almost five months later.[337]
- In the cases that Hanbao cites in support of its claims, unlike in this investigation, the respective parties attempted to correct their errors before the Department's preliminary determinations in those proceedings.[338]
- The Department has rejected similar arguments in prior investigations.[339] For instance, in *Light Truck Tires from the PRC,* the Department rejected an SRA applicant's arguments that it was unaware of the Department's supplemental SRA questionnaire in denying the company a separate rate in the antidumping duty investigation.[340] Importantly, the Department noted that email digests from ACCESS constitute official notice to an interested party or its representative that a document is available.[341]
- Hanbao and Baoqi identify no precedent or even any well-reasoned basis for accepting their proposed abandonment of separate rate examinations or the presumption that Chinese companies are market economy participants.[342] The mere fact that it is past December 2016 does not suffice for the Department to abandon separate rate examinations or presume that Chinese companies are market economy participants.[343]

Department's Position: Hanbao failed to respond to the Department's supplemental questionnaire. Without the information requested in these supplemental questionnaires, we are unable to fully examine or determine whether Hanbao demonstrated the absence of *de jure* and/or *de facto* governmental control over its operations. As such, we continue to treat Hanbao as part of the PRC-wide entity.

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[333] *Id.* at 42-43.
[334] *Id.* at 43.
[335] *Id.*
[336] *Id.*
[337] *Id.*
[338] *Id.*
[339] *Id.* at 44.
[340] *Id.* (citing Issues and Decision Memorandum accompanying *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China,* 80 FR 34893 (June 18, 2015) (*Light Truck Tires*), at Comment 48.
[341] *Id.*
[342] *Id.* at 45.
[343] *Id.*

On December 20, 2016, Hanbao made an entry of appearance in this case and filed for Administrative Protective Order (APO) access. On January 9, 2017, Hanbao submitted its response to the Department's Q&V questionnaire. On January 13, 2017, Hanbao submitted its SRA. On January 26, 2017, the Department issued Hanbao a supplemental questionnaire, which had a deadline of February 2, 2017, for Hanbao to provide a response. The Department didnot received a response to Hanbao's January 26, 2017, supplemental questionnaire. On March 17, 2017, Hanbao submitted a letter to the Department requesting that the Department remove one of its attorneys from the list of authorized applicants under the APO. On June 16, 2017, the Department issued its preliminary determination in this investigation. In our *Preliminary Determination*, we found that Hanbao filed a separate rate application, but subsequently failed to provide a response to supplemental questionnaire to establish its eligibility for a separate rate. Accordingly, we preliminarily determined to treat Hanbao as part of the PRC-wide entity. On June 23, 2017, five months after Hanbao's supplemental questionnaire was issued and after the *Preliminary Determination*, Hanbao submitted a "Notification of Non-Receipt of Questionnaire." On June 26, 2017, the Department rejected Hanbao's June 23, 2017, letter, finding that it contained untimely filed factual information.

As noted in the ACCESS Handbook, all interested parties on the public service list of a case are sent email digests which constitute official notice to an interested party or its representative that a document is available in ACCESS and that it is a part of the official record of the proceeding. Similar to the email notifications with daily digests of public documents and public versions released by the Department, email notifications for BPI documents generated by the Department are sent to lead attorney E-Filer accounts twice each day when documents have been approved for release. These email digests constitute official notice to the lead attorney that a BPI document is available in ACCESS. The ACCESS Handbook expressly states it is the responsibility of the lead attorney or his or her Proxy to retrieve the BPI documents. The Department will not email courtesy copies of documents containing an interested party's own BPI to it or its representative, and that BPI documents will be available for download for 14 calendar days from the document filed date.

Accordingly, we disagree with Hanbao's argument that because its counsel did not access or review the BPI supplemental questionnaire on ACCESS, it did not receive the supplemental questionnaire. The Department's email digests constitute official notice of a document, not whether a party accessed or reviewed the document on ACCESS.[344] We note that Hanbao does not argue that it is not on the public service or APO list or that it did not receive an email digest from ACCESS covering the Department's supplemental questionnaires on the date it was issued.

We also disagree with Hanbao's argument that the Department played a significant part in Hanbao's failure to respond to the supplemental questionnaire, due to the Department's purported failure to follow its own established regulations and procedures regarding the issuance of the supplemental questionnaire. Hanbao provides no citations to a Department practice or policy, or to any legal authority, to support its claim that the Department has a practice of not issuing a party a supplemental questionnaire until 14-days after the party's filing. Similarly, Hanbao provides no citations to a Department practice or policy, or to any legal authority, that it is Department procedure that, prior to the issuance of a supplemental questionnaire containing

[344] *See Light Truck Tires* and accompanying Issues and Decision Memorandum, at Comment 48.

BPI, the Department contacts the party's counsel to provide a copy of the questionnaire for BPI bracketing commenting, prior to the questionnaire's release. Contrary to Hanbao's claim, the Department has broad discretion regarding the issuance and timing of supplemental questionnaires, and there is no such policy or practice that the Department must follow in issuing supplemental questionnaires to separate rate applicants.

We also note that separate rate applications were due in this investigation on January 17, 2017, and that the Department began issuing separate rate supplemental questionnaires on January 24, 2017. Between January 24, 2017 and January 26, 2017, the date Hanbao's supplemental questionnaire was issued, the Department issued supplemental questionnaires to seven separate rate applicants.[345] Of these seven separate rate applicants who were issued supplemental questionnaires, Hanbao was the only applicant who failed to respond.[346]

Regarding Hanbao's argument that the Department erroneously rejected Hanbao's June 23, 2017, submission, we disagree. As we explained in our rejection letter,[347] Hanbao's June 23, 2017, submission contained untimely new factual information. Specifically, the Department identified Attachment A, as well as references to that attachment to constitute new factual information. We disagree with Hanbao argument that the rejected information in question consisted of a discussion of certain established practices of the Department that does not fall under the definition of "factual information" in 19 CFR 351.102 because it is akin to the citation of court cases, federal register notices, and issues and decision memoranda. Hanbao's June 23, 2017, submission contained an attachment that contained a copy of an email containing information that was not previously on the record. This email was not, nor was it akin to, a court

[345] *See* Letter to Jiaxing Gsun Imp. & Exp. Co., Ltd. re "Certain Hardwood Plywood Products from the People's Republic of China (PRC): Separate Rate Application," dated January 24, 2017; Letter to Deqing China Africa Foreign Trade Port Co., Ltd. re "Certain Hardwood Plywood Products from the People's Republic of China (PRC): Separate Rate Application," dated January 25, 2017; Letters to Cosco Star International Co., Ltd., Happy Wood Industrial Group Co., Ltd., Zhejiang Dehua TB Import and Export Co., Ltd., Feixian Longteng Wood Co., Ltd., and Hanbao re: "Certain Hardwood Plywood Products from the People's Republic of China (PRC): Separate Rate Application," dated January 26, 2017.

[346] *See* Letter from Jiaxing Gsun Imp. & Exp. Co., Ltd. re "Hardwood Plywood Products from the People's Republic of China: Separate Rate Application Supplemental Questionnaire Response," dated February 14, 2017; Letter from Deqing China Africa Foreign Trade Port Co., Ltd. re "Hardwood Plywood Products from the People's Republic of China: Separate Rate Application Supplemental Questionnaire Response," dated February 14, 2017; Letter from Cosco Star International Co., Ltd. re "Hardwood Plywood Products from the People's Republic of China: Separate Rate Application Supplemental Questionnaire Response," dated February 14, 2017; Letter from Happy Wood Industrial Group Co., Ltd. re "Hardwood Plywood Products from the People's Republic of China: Separate Rate Application Supplemental Questionnaire Response," dated February 14, 2017; Letter from Zhejiang Dehua TB Import and Export Co., Ltd. re "Hardwood Plywood Products from the People's Republic of China: Separate Rate Application Supplemental Questionnaire Response," dated February 14, 2017; and Letter from Feixian Longteng Wood Co., Ltd. e "Hardwood Plywood Products from the People's Republic of China: Separate Rate Application Supplemental Questionnaire Response," dated February 14, 2017.

[347] *See* Letter to Hanbao re: "Antidumping Duty Investigation of Hardwood Plywood Products from the People's Republic of China: Rejection of Untimely Filed Factual Information," dated June 26, 2017.

case, federal register notice, or issues and decision memorandum. Accordingly, we find that our rejection of this new information on the record was appropriate.

We similarly disagree with Hanbao's argument that the Department's certification requirement creates a new type of factual information that does not constitute new factual information under 19 CFR 351.102. In support of its argument, Hanbao cites[348] to *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013), which states:

> While procedural submissions do contain factual information (*e.g.*, the reason the company or attorney/representative needs an extension of time to submit a questionnaire response), we agree that such information is not relevant to our analysis of dumping or subsidization, and could reasonably be considered outside the ambit of factual information necessary for certification purposes. *Id.*

Here, Hanbao's June 23, 2017, submission was not simply a procedural submission because it contained an attachment that contained a copy of an email containing information that was not previously on the record, and argument related to this attachment as to why the Department should re-issue Hanbao's supplemental questionnaire.

Regarding Hanbao' argument that court precedent requires the Department to accept a late filing, we disagree. The underlying facts in the cases cited by Hanbao are distinguishable from the facts in this case. In *Artisan Mfg. Corp.*, the Department rejected an importer's quantity and value (Q&V) response because it was filed 16 hours late due to the counsel's inadvertence.[349] In that case, the importer's counsel explained to the Department that he had realized during the evening of April 11, 2012 (the due date for the submission), that the response had not been filed, and counsel arrived at the office at 7:00am the following day to finalize the response and "ensure filing at the earliest time possible."[350] The Court found that Department's need to assure impartiality in its procedures in antidumping duty investigations not a valid reason permitting the Department to reject this importer's questionnaire response and to assign the importer the PRC-wide antidumping duty rate since the importer would not have gained unfair advantage by the Department's acceptance of an untimely response as no other importer requested or could have benefited from a 16-hour extension.[351]

Here, Hanbao never submitted its supplemental questionnaire response, and waited almost five months after the deadline had passed before it contacted the Department to re-issue the supplemental questionnaire. Unlike in *Artisan Mfg. Corp.*, in which counsel attempted to promptly remedy his mistake before the preliminary determination, Hanbao waited almost five

[348] *See* Baoqi and Hanbao Brief, at 5.
[349] *See Artisan Mfg. Corp.*, at 1338-39.
[350] *Id.*
[351] *Id.* at 1347.

months after the deadline to seek a remedy for its failure to meet the supplemental questionnaire deadline.

The court's decision in *Grobest* is similarly distinguishable. In *Grobest*, the respondent had received a separate rate in the Department's initial investigation, and retained its separate rate in all subsequent review prior to the fourth review by filing a separate rate certification (SRC).[352] In the fourth review, the respondent filed its SRC ninety-five days after the deadline, but more than seven months before the preliminary results.[353] In finding that the Department had abused its discretion in denying the respondent's late SRC filing, the court found important that although the filing was late, it arrived more than seven months before the Department released its preliminary results.[354] Here, unlike in *Grobest*, Hanbao is being reviewed for the first time as a separate applicant in an investigation, and its attempt to correct its late filing occurred *after* the *Preliminary Determination*.

We agree with the petitioners that the facts in this case are more akin to our decision in *Light Truck Tires from the PRC*, in which the respondent's counsel claimed he monitored ACCESS for submissions, but did not learn of the SRA supplemental questionnaire issued to the respondent until the preliminary determination. In that case, we rejected the respondent's counsel's argument, explaining that the ACCESS email digests constitute official notice, and continued to find that the respondent had not demonstrated separate rate status.[355]

Regarding Baoqi and Hanbao's argument that its SRA submitted, on its face, is complete and provides sufficient information to establish the separation of Hanbao from the Government of China, we disagree. The supplemental questionnaire issued to Hanbao sought information needed to fully examine whether Hanbao demonstrated the absence of *de jure* and/or *de facto* governmental control over its operations.[356]

Pursuant to our analysis in Comment 6, *supra*, we also disagree with Baoqi and Hanbao's argument that there should now be a presumption of market economy status for China, and the Department should therefore continue to assign to Hanbao separate rate status.

Accordingly, in this case, we continue to find that Hanbao has not demonstrated its eligibility for a separate rate by establishing the absence of *de jure* and/or *de facto* governmental control over its operations, and as such, we continue to treat Hanbao as part of the PRC-wide entity.

Comment 8: Moot Arguments Concerning the Department's Application/Incorporation of AFA to the Separate Rate Margin Calculation

Bayley, Husch Blackwell clients, Kutak Rock clients, Mowry & Grimson clients, FEA Group and separate rate applicants, and Hanbao and Baoqi raised other arguments related to the AFA

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352 *See Grobest*, at 1364-65.
353 *Id.*
354 *Id.*
355 *See Light Truck Tires* and accompanying Issues and Decision Memorandum, at Comment 48.
356 *See* Letter to Hanbao re: "Certain Hardwood Plywood Products from the People's Republic of China ("PRC"): Separate Rate Application," dated January 26, 2017.

rate for the PRC-wide entity, and the inclusion of the AFA rate in the separate rate margin calculation in the *Preliminary Determination* (which averaged the AFA rate assigned to the PRC-wide entity (that included Bayley) and the *de minimis* rate calculated for Chengen). As explained in "Section V.," *supra*, for the final determination we are basing the AFA rate for the PRC-wide entity on Chengen's weighted-average dumping margin, not on the Petition rate as we did in the *Preliminary Determination*. Further, with respect to the margin for the separate rate respondents, in the final determination, we are following our normal practice which is to assign to separate rate entities that were not individually examined a rate equal to the average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA, in accordance with section 735(c)(5)(A) of the Act.[357] When only one weighted-average dumping margin for an individually investigated respondent is above *de minimis* and not based entirely on facts available, the separate rate will be equal to that single, above *de minimis* rate.[358] Accordingly, we are using Chengen's weighted-average dumping margin, which is not zero, *de minimis*, or based entirely on facts available as the rate for the separate rate entities that were not individually examined. Because the AFA margin is no longer based on the Petition rate, and we are not using this rate to calculate a final dumping margin for the non-individually examined separate rate applicants, these arguments are moot and, as such, are not addressed in this memorandum.

Comment 9: Bifurcated Briefing Schedule

Baoqi and Hanbao's Comments:

- The Department's bifurcated briefing schedule, in which it set deadlines related to certain case issues, is unnecessary, serves no purpose, is an arbitrary and capricious deviation from established Department procedures without any basis for such deviation provided, and is otherwise unlawful.[359] The rate assigned to the SRA respondents is directly related to the rates assigned to the mandatory respondents.[360] As the issues to be raised by the mandatory respondents are not known, it is impossible for the SRA respondents to comment on the impact of any possible adjustments to the rates for the mandatory respondents on the SRA respondents.[361]
- By depriving SRA respondents of an opportunity to comment on SRA rates in the case and rebuttal briefs filed with respect to mandatory respondents, SRA respondents are deprived of the opportunity of meaningful participation.[362]

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[357] *See*, *e.g.*, *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).
[358] *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 51779, 51781 (August 26, 2015).
[359] *See* Baoqi and Hanbao's Brief, at 1.
[360] *Id.*
[361] *Id.*
[362] *Id.* at 2.

The Petitioners' Comments:

- Baoqi and Hanbao's claims are incorrect and illogical.[363] Baoqi and Hanbao have an opportunity to comment on any issue raised by a mandatory respondent through a rebuttal brief, which the Department's regulations specifically identify as an opportunity to respond to "arguments raised in case briefs."[364] In addition, the companies have an opportunity to raise concerns made in a rebuttal brief through a hearing at the Department.[365]
- Moreover, Hanbao and Baoqi provide no support for claiming that the Department's "bifurcation" of the briefing schedule is "an arbitrary and capricious deviation from established Department procedures without any basis for such deviation."[366] Indeed, it is a tenet of U.S. trade law that Commerce has broad discretion in interpreting its own regulations.[367]

Department's Position: We disagree with Baoqi and Hanbao's argument that the Department's briefing schedule deprived the SRA respondents the opportunity to comment, and that briefing schedule was an arbitrary and capricious deviation from established Department procedures, and is otherwise unlawful.

On July 12, 2017, the Department set deadlines for the submission of case briefs related to the Department's preliminary decision regarding Bayley, as well as all issues affecting separate rate applicants.[368] On August 25, 2017, the Department set deadlines for the submission of scope case briefs related to certain scope issues.[369] On September 29, 2017, the Department set deadlines for the submission of case briefs relating to any remaining issues, except for remaining scope issues.[370] On October 16, 2017, the Department set deadlines for the submission of scope case briefs related to remaining scope issues.[371]

Regarding Baoqi and Hanbao's argument that this briefing schedule deprives the SRA respondents to comment on the rates to be assigned to the SRA respondents, we disagree. The SRA respondents had the opportunity to comment and submit briefs on any and all issues delineated in the schedule above. Further the briefing schedules provided for rebuttal brief deadlines, and the SRA respondents had the opportunity to comment and submit a rebuttal brief regarding any issues delineated above. If Baoqi and Hanbao had concerns or questions as to the briefing schedule, they simply could have asked the Department for clarification.

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[363] *See* Petitioners' Rebuttal Brief, at 46.
[364] *Id.*
[365] *Id.* at 46-47.
[366] *Id.* at 47.
[367] *Id.*
[368] *See* Memorandum, "Case Brief Schedule," dated July 12, 2017; *see also* Memorandum, "Clarification of Case Brief Schedule," dated July 18, 2017.
[369] *See* Memorandum, "Scope Case Brief Schedule," dated August 25, 2017.
[370] *See* Memorandum, "Briefing Schedule for Final Determination," dated September 29, 2017.
[371] *See* Memorandum, "Scope Case Brief Schedule," dated October 16, 2017.

Regarding Baoqi and Hanbao's argument that the briefing schedule was unnecessary, serves no purpose, is an arbitrary and capricious deviation from established Department procedures, and is otherwise unlawful, we disagree. Baoqi and Hanbao have not provided any citation or underlying support for their argument that the Department's briefing schedule departed from an "established Department procedure." Contrary to Baoqi and Hanbao's claim, the Department has the discretion to set and enforce deadlines.[372] As we explained in Comment 4, *supra*, this case involved novel and complex issues concerning mandatory respondents and separate rate respondents, and complex scope issues. The briefing schedule was created to provide the interested parties with a phased briefing schedule to assist in their submission of briefs, and the Department with the ability to timely and thoroughly examine all issues, without inhibiting the timely completion of this investigation.

Conclusion

We recommend applying the above methodology for this final determination.

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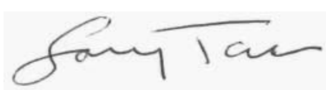
Agree Disagree

11/6/2017

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

[372] *See, e.g.*, Grobest & I-Mei Indus. (Vietnam) v. United States, 815 F. Supp. 2d 1342, 1365 (CIT 2012); *see also Dongtai Peak v. United States*, 777 F. Supp. 2d 1343, 1353 (Fed. Cir. 2015).