

*Linyi Chengen Import and Export Co., Ltd., et al. v. United States*

Consol. Court No. 18-00002, Slip Op. 19-67 (CIT June 3, 2019)

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**

**I. SUMMARY**

The Department of Commerce (Commerce) has prepared these final results of redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (CIT) in *Linyi Chengen Import and Export Co., Ltd., et al. v. United States*, Consol. Court No. 18-00002, Slip Op. 19-67 (CIT June 3, 2019) (*Remand Order*). These final remand results concern Commerce’s final determination in the antidumping duty investigation of certain hardwood plywood products from the People’s Republic of China, in which Commerce calculated mandatory respondent Linyi Chengen Import and Export Co., Ltd. (Chengen)’s normal value (NV) by applying the intermediate input methodology, rather than by valuing Chengen’s log factors of production (FOPs).<sup>1</sup> In its *Remand Order*, the CIT stated that Commerce’s *Final Determination* failed to explain how the record evidence – particularly the verification report and related exhibits – supported Commerce’s finding that Chengen’s log consumption calculations were unreliable.<sup>2</sup> The CIT highlighted its concern with two

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<sup>1</sup> See *Certain Hardwood Plywood Products from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 53460 (November 16, 2017) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM); and *Certain Hardwood Plywood Products from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 83 FR 504 (January 4, 2018).

<sup>2</sup> See *Remand Order*, Slip Op. 19-67 at 15.

evidentiary issues: (1) conflicting accounts between Commerce and Chengen regarding whether the conversion table and formula Chengen used to calculate its log consumption volume were the Chinese National Standard and whether they yielded accurate log volumes; and (2) whether the record contains third-party confirmation of Chengen's reported log consumption.<sup>3</sup> The CIT specifically contrasted Commerce's determination that the record did not support the claim that the conversion table and formula were the Chinese National Standard with Chengen's assertion in its plaintiff's brief that at verification Commerce removed additional pages from the table and formula identifying them as such.<sup>4</sup> Citing perceived inconsistencies in the record evidence and statements made by Chengen in this litigation, the CIT held that Commerce's *Final Determination* was arbitrary and capricious, and remanded to Commerce to reconsider its findings regarding Chengen's reporting of its log consumption.<sup>5</sup> Reasoning that Commerce's *Final Determination* regarding Chengen's log consumption reporting might change on remand, the CIT reserved its decision on Commerce's application of the intermediate input methodology and valuation of veneer inputs, which were both challenged by Chengen.<sup>6</sup> The CIT further directed Commerce to reconsider the rates applied to the separate rate companies if Commerce were to make any change to Chengen's margin on remand.<sup>7</sup>

On July 19, 2019, Commerce uploaded to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) the draft results of redetermination and established 12:00 p.m. on July 25, 2019, as the deadline for interested

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<sup>3</sup> *Id.* at 15-16.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 15-16, and 29.

<sup>6</sup> *Id.* at 19-20, and 29.

<sup>7</sup> *Id.* at 21 and 29.

parties to provide comments on the Draft Results of Redetermination.<sup>8</sup> On July 23, 2019 Commerce denied the request of interested parties to extend the deadline to comment on the Draft Results of Redetermination to 5:00 p.m. on August 5, 2019.<sup>9</sup> On July 25, 2019, pursuant to the CIT's Order in *Linyi Chengen Import and Export Co., Ltd., et al. v. United States*, Consol. Court No. 18-00002, Slip Op. 19-67, dated July 25, 2019, Commerce extended the deadline for interested parties to comment on the Draft Results of Redetermination to August 5, 2019.<sup>10</sup> On August 5, 2019, the Coalition for Fair Trade in Hardwood Plywood (the petitioner), Chengen, Taraca Pacific, Inc. (Taraca Pacific), and Zhejiang Dehua TB Import & Export Co., Ltd. (Dehua TB), submitted comments on the Draft Results of Redetermination.<sup>11</sup>

As set forth in detail below, pursuant to the CIT's *Remand Order*, Commerce has provided further information about the perceived inconsistencies in the record, and responded to comments by interested parties, but continues to find that Chengen has failed to substantiate its log volume consumption and reporting. Therefore, on remand, we continue to apply the intermediate input methodology and valuation of veneers as set forth in the *Final Determination*. We consequently make no changes to Chengen's margin or the separate rate.

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<sup>8</sup> See Memorandum, "*Linyi Chengen Import and Export Co., Ltd., et al. v. United States*, Consol. Court No. 18-00002, Slip Op. 19-67 (CIT June 3, 2019): Draft Results of Redetermination Pursuant to Court Remand," dated July 19, 2019 (Draft Results of Redetermination).

<sup>9</sup> See Memorandum, "Request for Extension of Draft Comments Deadline," dated July 23, 2019.

<sup>10</sup> See Memorandum, "Extension of Draft Comments Deadline," dated July 25, 2019.

<sup>11</sup> See Petitioner's Comments, "Comments on Draft Remand Results," dated August 5, 2019 (Petitioner's Draft Comments); Chengen et al.'s Comments, "Comment on Draft Remand Determination," dated August 5, 2019 (Chengen's Draft Comments); Taraca Pacific et al.'s Comments, "Comment on Draft Remand Determination," August 5, 2019 (Taraca Pacific's Draft Comments); and Dehua TB et al.'s Comments, "Comments on Draft Results of Redetermination Pursuant to Court Remand, Consol. Court No. 18-00002," dated August 5, 2019 (Dehua TB's Draft Comments).

## II. DISCUSSION

### A. Procedural Background

On December 8, 2016, Commerce initiated an antidumping duty investigation on certain hardwood plywood products from China.<sup>12</sup> Chengen is an integrated producer of plywood, meaning that its production process begins with peeling logs into thin veneers instead of purchasing the veneers from suppliers.<sup>13</sup> In March 2017, approximately three months prior to the *Preliminary Determination*, the petitioner first raised the prospect of adopting the intermediate input methodology in this investigation.<sup>14</sup> In its submission, the petitioner argued that Chengen was unable to accurately record and substantiate its FOPs, that it did not account for many unknown variables in its books and records that may influence its reported FOPs, that it did not report or account for all relevant information to identify all necessary FOPs in its books and records, and that its methodology for calculating its log consumption was imprecise.<sup>15</sup> In response to the petitioner's comments, Chengen submitted 123 pages of argument and documentation that contended that its reporting methodology was reasonable based on the accounting records it kept in the normal course of business and that it captured and reported all of its production costs.<sup>16</sup> In these submissions, Chengen declined to mention that its reported log consumption was based on a conversion table and formula that Chengen later claimed to be the

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<sup>12</sup> See *Certain Hardwood Plywood Products from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 91125 (December 16, 2016).

<sup>13</sup> See, e.g., Chengen's March 1, 2017, Section D Questionnaire Response (Chengen's SDQR) at Exhibit D-3.

<sup>14</sup> See Petitioner's Letter, "Petitioner's Comments on Chengen's Questionnaire Responses," dated March 20, 2017 (Petitioner's March 20 Comments); see also *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 (PDM).

<sup>15</sup> See Petitioner's March 20 Comments at 3-6.

<sup>16</sup> See Chengen's Letter, "Rebuttal to Petitioner's Comments on Supplemental Section D Response," dated March 27, 2017, at 4-6 and Exhibits 1-3.

Chinese National Standard.<sup>17</sup> Furthermore, over the course of four months prior to the *Preliminary Determination*,<sup>18</sup> Chengen responded to initial and detailed supplemental questionnaires from Commerce, three of which focused on Chengen’s production process and FOPs.<sup>19</sup> However, in none of these submissions did Chengen disclose that it did not receive any invoices from its suppliers of poplar logs or that it used a conversion table and formula to calculate the volume of its log purchases. To the contrary, in response to a request for a list of documents generated, used, or relied upon in the normal course of business during each stage of production of the merchandise under consideration, Chengen identified, among other documents, “Material purchase invoices” with no qualifications, or mention of any exceptions.<sup>20</sup> In response to a request to “provide a detailed explanation and supporting documentation for how {Chengen} records the purchase and consumption of each input in the normal course of business,” Chengen stated that the “accountants record purchases according to warehouse-in tickets and invoices in the normal business at a given month in the normal course of accounting.”<sup>21</sup> Based on Commerce’s extensive experience analyzing business practices, this response conforms with Commerce’s understanding of normal business practices wherein a supplier provides the purchaser with a commercial invoice and company accountants enter purchases into cost ledgers using those invoices and warehouse or inventory-in slips that are generated by the companies’ own workers.

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<sup>17</sup> *Id.*

<sup>18</sup> See *Preliminary Determination* PDM at 4.

<sup>19</sup> See Chengen’s SDQR; Chengen’s April 17, 2017, Supplemental Section D Questionnaire Response (Chengen’s SuppD); and Chengen’s May 15, 2017, Supplemental Section A, C, and D Questionnaire Response (Chengen’s SuppACD).

<sup>20</sup> See Chengen’s SDQR at 4-5.

<sup>21</sup> See Chengen’s SuppD at 7.

Based on Chengen’s record submissions prior to verification, Commerce made a *Preliminary Determination* that Chengen’s log purchase documentation substantiated its reported consumption quantities.<sup>22</sup> Commerce therefore declined to apply the intermediate input methodology in the *Preliminary Determination*, explaining:

We note that the petitioner {} {has} argued that {Commerce} should depart from its normal practice and apply the intermediate input methodology. In response, Chengen has argued against the use of such methodology. {Commerce’s} general practice for integrated firms is to value all factors used in each stage of production, and we have not found sufficient cause to deviate from this practice. Chengen provided detailed responses and supporting documentation to our questionnaires, demonstrating how it is an integrated producer which begins its manufacture of hardwood plywood with the purchase of logs. Chengen reported the quantity of logs purchased and consumed during the POI and supported that consumption with raw material ledgers that tie to inventory movement worksheets, warehouse out-slips, and accounting vouchers. Because Chengen’s log consumption figures are in its normal books and records, these data can be verified. Moreover, Chengen has indicated that it reported all inputs consumed in the production of veneers. {At this time, Commerce} does not find the record in this case meet{s} the limited exceptions for applying the intermediate input methodology.<sup>23</sup>

However, Commerce also put the interested parties on notice in its *Preliminary Determination* by stating that Commerce “will continue to evaluate its...preliminary decision not to apply the intermediate input methodology, pending additional information that may become available in this investigation.”<sup>24</sup>

Commerce conducted verification of Chengen from September 11 through September 18, 2017.<sup>25</sup> At verification, Commerce made several observations that conflicted with Commerce’s understanding, based on Chengen’s prior record submissions, of Chengen’s production process

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<sup>22</sup> See *Preliminary Determination* PDM at 16-17 and 38-39.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 17.

<sup>25</sup> 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), at 1.

and the nature of the documents supporting its reported log consumption. These observations called into question the accuracy of Chengen's log purchase and consumption records, and its ability to substantiate such records.<sup>26</sup>

First, as explained in the verification report, Commerce learned for the first time at verification that the suppliers of poplar logs, Chengen's most significant input, do not provide an invoice to Chengen upon delivery of Chengen's purchased logs.<sup>27</sup> Rather, the quantity of delivered logs is calculated and recorded by Chengen. Specifically, Chengen officials explained that the log suppliers who deliver the logs to Chengen mark the diameter of the small end of the logs on the end of each log, and the Chengen production manager spot checks the diameter of those logs upon delivery.<sup>28</sup> The Chengen production manager then calculates the volume of logs in cubic meters using a conversion table and formula, and then records those calculated quantities on warehouse in-tickets.<sup>29</sup> This process, whereby Chengen itself calculates and records the quantity of its purchased logs, rather than the poplar log suppliers, contradicted Commerce's understanding prior to verification that the poplar suppliers provided Chengen with invoices for the purchased logs. The second key fact Commerce learned for the first time at verification was that the log quantities Chengen reported in its questionnaire responses were derived using the aforementioned conversion table and formula, which based volume calculations on the diameter of the smaller end of the log.<sup>30</sup> Commerce requested a copy of the conversion table and formula and included it as an exhibit in the verification report.<sup>31</sup>

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<sup>26</sup> See *Final Determination* IDM at 24.

<sup>27</sup> See Chengen Verification Report at 13.

<sup>28</sup> *Id.* at 11.

<sup>29</sup> *Id.* at 11-12.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 11 and Exhibit 26.

On October 10, 2017, the petitioner filed its case brief and argued again that Commerce should apply the intermediate input methodology to calculate Chengen’s NV, in part because of Commerce’s observation at verification that Chengen calculates its log volume based on the diameter of the narrow end of the log.<sup>32</sup> On October 12, 2017, Chengen filed a rebuttal case brief<sup>33</sup> that Commerce rejected, pursuant to 19 CFR 351.302(d), because it contained untimely filed new factual information.<sup>34</sup> However, Commerce permitted Chengen to file a redacted rebuttal case brief, omitting the new factual information, which Chengen submitted on October 20, 2017.<sup>35</sup> Although Chengen asserted in its rebuttal case brief that the conversion table and formula were the Chinese National Standard, it did not allege that Commerce failed to accept additional pages providing information about the conversion table and formula, or that the verification report otherwise portrayed an inaccurate or incomplete account of events at verification.<sup>36</sup> Commerce issued its *Final Determination* on November 16, 2017.<sup>37</sup> In deciding to apply the intermediate input methodology in the *Final Determination*, Commerce considered its verification findings and the arguments raised by the parties in their briefs.<sup>38</sup> In the *Final Determination*, Commerce explained in detail why the conversion table and formula Chengen used called into question the accuracy of Chengen’s reported log volumes, and why Chengen failed to demonstrate that the conversion table and formula were the Chinese National Standard:

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<sup>32</sup> See Petitioner’s Case Brief, “Certain Hardwood Plywood Products from the People’s Republic of China: Case Brief of the Coalition for Fair Trade in Hardwood Plywood,” dated October 10, 2017, at 13.

<sup>33</sup> See Chengen’s Rejected Rebuttal Brief, “Hardwood Plywood Products from the People’s Republic of China: Rebuttal Brief,” dated October 12, 2017.

<sup>34</sup> See Commerce’s Letter, “Antidumping Duty Investigation of Hardwood Plywood Products from the People’s Republic of China: Rejection of Untimely Filed New Factual Information in Rebuttal Brief,” dated October 19, 2017 (Rejection of Untimely Filed New Factual Information in Rebuttal Brief).

<sup>35</sup> See Chengen’s Rebuttal Brief, “Hardwood Plywood Products from the People’s Republic of China: Redacted Rebuttal Brief,” dated October 20, 2017 (Chengen’s Rebuttal Brief).

<sup>36</sup> *Id.* at 13-14.

<sup>37</sup> See *Final Determination*.

<sup>38</sup> See *Final Determination* IDM at 23.

{B}ecause 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 {Commerce} verified that the company relied on the Chinese National {S}tandard conversion tables in the recording of the actual volume of logs, 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 {S}tandard. Further, the conversion table observed by {Commerce} contains no information as to how and upon what basis the conversion formula was derived.<sup>39</sup>

The reliability of Chengen’s log volume calculations was further called into question by the fact that its poplar suppliers did not provide invoices for Chengen’s purchased log quantities.

Commerce explained in the *Final Determination*:

{A}lthough 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 {Commerce} because poplar log is Chengen’s most significant input.<sup>40</sup>

Therefore, in the *Final Determination*, Commerce determined that it could not rely upon the poplar log consumption volumes reported by Chengen and that it was appropriate to apply the intermediate input methodology.<sup>41</sup> Accordingly, Commerce valued 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.<sup>42</sup>

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<sup>39</sup> *Id.* at 25.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at Comment 2.

<sup>42</sup> *Id.*

On November 20, 2017, following Commerce’s *Final Determination*, Chengen filed ministerial error allegations asserting for the first time that at verification, Chengen officials provided Commerce with not just the conversion table and formula, but the full text of the Chinese National Standard, including a cover page that identified the conversion table and formula as the Chinese National Standard.<sup>43</sup> Chengen also alleged that the untranslated Chinese characters at the top of the conversion table and formula identified them as the Chinese National Standard.<sup>44</sup> According to Chengen, Commerce verifiers declined to take the cover page because they knew that the conversion table and formula were the Chinese National Standard and therefore extracted only the pages they needed for the calculations.<sup>45</sup> Chengen’s ministerial error allegations, filed *after* the *Final Determination*, was the first time in the investigation that Chengen mentioned additional pages to the conversion table and formula or otherwise suggested that Commerce’s verification report was incomplete. In its ministerial error memorandum, Commerce reiterated that it considered all record evidence in making its *Final Determination*, but that Chengen had failed to demonstrate that the conversion table and formula were the Chinese National Standard or that they resulted in accurate log volumes.<sup>46</sup> Commerce also reiterated that it was unable to corroborate the log volumes reported in Chengen’s records against third-party sources because the poplar suppliers did not provide invoices and Chengen did not cite to record evidence indicating that the value-added tax (VAT) invoices were not unilaterally dictated by Chengen.<sup>47</sup> On November 22, 2017, Chengen also filed a request that Commerce

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<sup>43</sup> See “Hardwood Plywood Products from the People’s Republic of China: Allegation of Ministerial Errors in Final Determination,” dated November 20, 2017 (Chengen’s Ministerial Error Allegations), at 3, 7.

<sup>44</sup> *Id.* at 4.

<sup>45</sup> *Id.* at 3-4.

<sup>46</sup> See “Antidumping Duty Investigation of Certain Hardwood Plywood Products from the People’s Republic of China: Allegations of Ministerial Errors in the Final Determination,” dated December 8, 2017 (Ministerial Error Memorandum), at 6.

<sup>47</sup> *Id.*

reconsider its *Final Determination* and rescind the investigation.<sup>48</sup> Commerce rejected this request in its entirety, pursuant to 19 CFR 351.302(d), because it contained untimely filed new factual information and untimely filed written argument.<sup>49</sup>

In the subsequent litigation, Chengen has vigorously disputed Commerce's findings in the *Final Determination* regarding the provenance and accuracy of the conversion table and formula, as well as Commerce's finding that the record lacks third-party confirmation of Chengen's recorded log volume consumption.<sup>50</sup> Furthermore, in its submissions in this litigation, Chengen repeated its assertion, first raised in its ministerial error allegations, that Commerce verifiers extracted only the conversion table and formula and left behind any additional pages because they understood the table and formula to be the Chinese National Standard.<sup>51</sup> Although Commerce's verification report states that Commerce accepted the conversion table and formula, which is also attached to the report as an exhibit, the verification report does not mention the existence of additional pages attached to the table and formula.<sup>52</sup> Other record evidence and the Government's response brief in this litigation also do not contain an account by Commerce of what occurred at verification with respect to the additional pages. The variation between Commerce's account of verification (particularly the lack of explanation in the verification report regarding the extra pages), and Chengen's account of verification (as put forth during the litigation), are a point of concern in the *Remand Order*.

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<sup>48</sup> See Commerce's Letter, "Antidumping Duty Investigation of Hardwood Plywood Products from the People's Republic of China: Rejection of Submission," dated November 27, 2017 (Rejection of Request to Reconsider the Investigation).

<sup>49</sup> *Id.*

<sup>50</sup> See "Plaintiff's Rule 56.2 Memorandum in Support of Motion for Judgment upon the Agency Record," *Linyi Chengen Import & Export Co., Ltd., et al. v. United States*, CIT No. 18-00002, (July 13, 2018) (Chengen Plaintiff's Brief); "Plaintiff's Reply Brief," *Linyi Chengen Import & Export Co., Ltd., et al. v. United States*, CIT No. 18-00002 (November 21, 2018) (Chengen Reply Brief) at 1-14.

<sup>51</sup> See Chengen Plaintiff's Brief at 19-20; and Chengen Reply Brief at 9-10.

<sup>52</sup> See Chengen Verification Report at 11 and Exhibit 26.

There are two reasons why the record lacks a statement from Commerce regarding what took place at verification with respect to the extra pages. First, Chengen did not raise the issue of additional pages to the conversion table and formula until its ministerial error allegations.<sup>53</sup> Commerce did not address Chengen's assertions regarding the extra pages in its ministerial error memorandum<sup>54</sup> because Chengen's allegations do not constitute ministerial errors under the meaning of 19 CFR 351.224(f).<sup>55</sup> As Commerce explained in its ministerial error memorandum:

Chengen's allegation is a challenge to {Commerce's} deliberate methodological determination to apply the intermediate input methodology based on our finding that Chengen failed to record and substantiate accurately the log factors of production associated with producing veneers. Although Chengen disagrees with {Commerce's} determination, methodological decisions do not constitute ministerial errors.<sup>56</sup>

Second, the United States did not raise the issue of the extra pages in its submissions to the Court because the administrative record did not contain any statement by Commerce regarding the extra pages. The CIT has held that “{g}enerally speaking, this Court’s authority for judicial review is confined to the administrative record.”<sup>57</sup> The CIT has also stated that “{f}or purposes of judicial review, the Court may consider only materials contained in the administrative record.”<sup>58</sup> Because the administrative record did not contain a discussion and position by Commerce regarding the extra pages Chengen asserts it presented at verification, it would have been improper for the United States to put forth an agency position in briefs before the CIT.

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<sup>53</sup> See Chengen’s Ministerial Error Allegations at 3-4.

<sup>54</sup> See Ministerial Error Memorandum at 5-7.

<sup>55</sup> A ministerial error is “an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.” See 19 CFR 351.224(f).

<sup>56</sup> See Ministerial Error Memorandum at 6. Although Commerce did address Chengen’s ministerial error allegations about the provenance and accuracy of the conversion table and formula, as well as the existence of third-party confirmation of log volumes, such arguments reiterate Commerce’s findings in the *Final Determination*.

<sup>57</sup> See *Florida Tomato Exchange v. United States*, 973 F. Supp. 2d 1334, 1338 (Ct. Int’l Trade 2014).

<sup>58</sup> See *Kerr-McGee Chemical Corp. v. United States*, 985 F. Supp. 1162, 1163 (Ct. Int’l Trade 1997) (*Kerr-McGee*).

However, the absence of Commerce's account of events at verification with respect to the extra pages has perhaps contributed to the Court's perception that Commerce's *Final Determination* was not based on substantial evidence. Therefore, Commerce attached to the draft remand a declaration from an analyst who was part of the verification team that explained what occurred at verification,<sup>59</sup> and invited interested parties the opportunity to submit rebuttal factual information and comment on this declaration in their comments to the draft remand.

According to the declaration, and as indicated in the verification report, Commerce learned for the first time at verification that Chengen's production manager uses a conversion table, which is based on a formula, to calculate the volume of purchased logs in cubic meters.<sup>60</sup> Verifiers observed that a copy of the conversion table was on a desk in the veneer storage area during a tour of Chengen's facilities.<sup>61</sup> The worksheet also contained a formula and Chinese-language text.<sup>62</sup> This was the first point in the investigation that Commerce was made aware of the existence of a formula or conversion table designed to calculate the volume of logs consumed by Chengen, despite having issued numerous questionnaires and receiving many hundreds of pages of responses and supporting documentation from Chengen over the course of four months prior to the *Preliminary Determination*.<sup>63</sup>

Because the conversion table and formula were relevant to the manner in which Chengen calculated the log volumes reported to Commerce in its questionnaire responses, verifiers considered the conversion table and formula to be information that was linked to the reported log volumes, rather than new factual information.<sup>64</sup> Accordingly, verifiers requested copies of the

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<sup>59</sup> See Attachment, "Analyst Declaration" (Declaration).

<sup>60</sup> See Declaration at 2; and Chengen Verification Report at 11-12.

<sup>61</sup> See Declaration at 2; and Chengen Verification Report at Verification Exhibit 26.

<sup>62</sup> *Id.*

<sup>63</sup> See *Preliminary Determination* PDM at 4.

<sup>64</sup> See Declaration at 2.

conversion table and formula for inclusion in a verification exhibit.<sup>65</sup> At the verification conference room, company officials presented verifiers with the requested pages containing the conversion table and formula, as well as a significant number of additional pages of documentation.<sup>66</sup> The verifiers did not review these extra pages and did not request an explanation of the additional information contained therein.<sup>67</sup> This is because the verifiers had not requested this additional documentation and understood it to be new factual information that was previously absent from the record.<sup>68</sup> As explained in more detail below, verification is not the proper venue for submitting new factual information. If Chengen had wanted Commerce to consider the information contained in the additional pages, Chengen should have submitted it for consideration by Commerce and interested parties prior to verification.<sup>69</sup> Accordingly, the verifiers only took the conversion table and formula observed on the facility tour to include in a verification exhibit but declined to include the unrequested additional pages containing new factual information.<sup>70</sup> In the *Final Determination*, Commerce concluded that the record evidence does not substantiate Chengen's claims that the conversion table and formula are the Chinese National Standard, or that they yield accurate log volumes.<sup>71</sup>

In the *Remand Order*, the CIT asserted that while the *Final Determination* critiqued aspects of Chengen's calculations of log consumption, it failed to explain how the record, particularly the verification report and related exhibits, supported the conclusion that Chengen's log consumption calculations were unreliable.<sup>72</sup> The CIT expressed concern that Commerce

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 3.

<sup>69</sup> *Id.* at 2-3.

<sup>70</sup> *Id.* at 3.

<sup>71</sup> See *Final Determination* IDM at 24-25.

<sup>72</sup> See *Remand Order*, Slip Op. 19-67 at 15.

verifiers allegedly detached a cover page from the conversion table and formula that identified the document as the Chinese National Standard.<sup>73</sup> The CIT also stated that there was no explanation as to why Commerce found “delivery sheets provided by suppliers (‘warehouse-in tickets’) or the copies of invoices provided by Linyi Chengen to its suppliers for official value-added tax purposes” to be insufficient for purposes of calculating Chengen’s log consumption.<sup>74</sup> Based upon this conclusion, the CIT ruled that the *Final Determination* was arbitrary and capricious in light of the perceived inconsistencies on the record and remanded the *Final Determination* for further explanation.<sup>75</sup>

## **B. Analysis**

We continue to find that Chengen failed to substantiate the accuracy of its log volume calculations and records. Specifically, we continue to find that record evidence does not support Chengen’s assertion that the conversion table and formula are the Chinese National Standard or that they result in accurate log volume calculations. We also continue to find that Chengen did not produce third-party documentation that substantiates Chengen’s reported log consumption.

### **1. Conversion Table and Formula**

The Federal Circuit has stated that it is the respondent’s responsibility to build the administrative record in a proceeding.<sup>76</sup> In this investigation, Chengen failed to build a record that demonstrates that the conversion table and formula it uses are the Chinese National Standard, and that they yield accurate log volumes. As detailed above, Chengen was on notice early on in the investigation that Commerce might apply the intermediate input methodology.

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<sup>73</sup> *Id.* at 16.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 16 and 29.

<sup>76</sup> See *Nan Ya Plastics Corp., Ltd. v. United States*, 810 F. 3d 1333, 1337 (Fed. Cir. 2016) (*Nan Ya Plastics*) (“{T}he burden of creating an adequate record lies with interested parties and not with Commerce.”) (internal quotations and citations omitted).

Months before the *Preliminary Determination*, the petitioner urged Commerce to apply the intermediate input methodology, and Chengen submitted multiple documents rebutting the petitioner's assertions regarding the use of this methodology. These arguments largely related to Chengen's record keeping, rather than Chengen's method of calculating log volume based on the narrow diameter, which Commerce first learned about at verification. However, it was clear long before the *Preliminary Determination* that the accuracy of Chengen's consumption rates would be a primary focal point of this investigation. Therefore, not only was Chengen on notice early on in the investigation that Commerce might apply the intermediate input methodology, but Chengen actively participated in rebutting the petitioner's suggestion and submitted multiple documents in support of its own position. In none of these submissions did Chengen submit the conversion table and formula or any information that would identify them as the Chinese National Standard and demonstrate that the formula's underlying methodology produces accurate volume calculations when using the diameter of the narrow end of a log.

The CIT has stated that “{a}gencies generally enjoy broad discretion in fashioning rules of administrative procedure, including the authority to establish and enforce time limits on the submission of data by interested parties.”<sup>77</sup> Accordingly, Commerce's regulations at 19 CFR 351.301 set forth the deadlines for the submission of new factual information in the course of a proceeding. Pursuant to 19 CFR 351.102(b)(21)(i), factual information includes “{e}vidence, including statements of fact, documents, and data submitted either in response to initial and supplemental questionnaires, or, to rebut, clarify, or correct such evidence submitted by any other interested party.” Factual information also includes “{e}vidence, including statements of

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<sup>77</sup> See *Tianjin Machinery Import & Export Corp. v. United States*, 353 F. Supp. 2d 1294, 1303 (Ct. Int'l Trade 2004).

fact, documents, and data submitted either in support of allegations, or, to rebut, clarify, or correct such evidence submitted by any other interested party.”<sup>78</sup> Furthermore, 19 CFR 351.302(d) authorizes Commerce to reject untimely filed or unsolicited new factual information, and Commerce will not consider any such rejected materials in making a determination.<sup>79</sup> In this investigation, the last supplemental questionnaire response prior to verification was due on May 15, 2017.<sup>80</sup> No fewer than 24 of the questions in that supplemental questionnaire, many of which included multiple sub-parts, concerned Chengen’s Section D reporting, and Chengen submitted a revised FOP database with its response.<sup>81</sup> Accordingly, Chengen had the opportunity to submit new factual information to challenge the petitioner’s assertion that Commerce should apply the intermediate input methodology until just over one month before the *Preliminary Determination*. Consequently, Commerce had the authority to reject any new factual information Chengen attempted to submit subsequent to this date regarding its log consumption calculation and records.

Commerce also explained in its verification agenda that although “verification is not intended to be an opportunity for submission of new factual information,” it accepts new information at verification when “(1) the need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record.”<sup>82</sup> Commerce

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<sup>78</sup> See 19 CFR 351.102(b)(21)(ii).

<sup>79</sup> See 19 CFR 351.302(d).

<sup>80</sup> See Commerce’s Letter, “Supplemental ACD Questionnaire Extension,” dated May 10, 2017.

<sup>81</sup> See Chengen’s SuppACD at 1-2 and 17-26.

<sup>82</sup> See Commerce’s Letter, “Antidumping Duty Investigation of Certain Hardwood Plywood Products from the People’s Republic of China: Verification Agenda,” dated August 22, 2017 (Chengen Verification Agenda), at 2; see also *TMK IPSCO v. United States*, No. 10-00055, Slip Op. 16-62 at 45 n.34 (Ct. Int’l Trade June 24, 2016) (noting Commerce’s practice regarding acceptance of new information at verification in certain instances).

also explained that “acceptance of such information for examination at verification does not guarantee that {Commerce} will be able to use it for {the final determination.}.”<sup>83</sup>

Although Chengen failed to present Commerce with the conversion table and formula until verification, the log volumes Chengen reported in its questionnaire responses were derived from that conversion table and formula.<sup>84</sup> The conversion table and formula were therefore the type of information Commerce indicated, in its verification agenda, that it might accept at verification because that information “corroborates, supports, or clarifies information already on the record.”<sup>85</sup> Because the conversion table and formula were tied to information already on the record, the Commerce verifiers reasonably determined that it was appropriate to request this information from Chengen.<sup>86</sup> Furthermore, because Chengen workers used this conversion table to calculate the volume of logs, verifiers considered those facts relevant to clarify the nature of the data reported to Commerce by Chengen over the course of the investigation.<sup>87</sup> Accordingly, verifiers requested from company officials copies of the two-pages of documents containing the conversion table and formula that were observed at the production facility where the logs were first recorded into Chengen’s records.<sup>88</sup> Although Chengen claims that the Chinese characters on the verification exhibits indicate that the conversion table and formula are the Chinese National Standard,<sup>89</sup> Commerce made no such finding in the *Final Determination*. Furthermore, both the verification agenda and Commerce’s regulations clearly state that documents must be translated into English.<sup>90</sup>

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<sup>83</sup> See Chengen Verification Agenda at 2.

<sup>84</sup> See Declaration at 2.

<sup>85</sup> See Chengen Verification Agenda at 2.

<sup>86</sup> See Declaration at 2.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 2; and Chengen Verification Report at Verification Exhibit 26.

<sup>89</sup> See Chengen Plaintiff’s Brief at 20-21.

<sup>90</sup> See Chengen’s Verification Agenda at 4 (“All documents presented during verification must be translated on the first occasion on which they are presented.”); and 19 CFR 351.303(e).

In contrast to the conversion table and formula, which was requested by the verifiers, Chengen attempted on its own initiative to provide extensive additional information to the verifiers. The verifiers reasonably made the determination that the additional pages attached to the conversion table and formula constituted new factual information and properly declined to accept those additional pages, consistent with Commerce’s regulations governing the submission of factual information.<sup>91</sup> The CIT has acknowledged that “{t}he purpose of verification is not to continue the information-gathering stage of {Commerce’s} investigation...Verification is intended to test the accuracy of data already submitted, rather than to provide a respondent with an opportunity to submit a new response.”<sup>92</sup> The CIT and the Federal Circuit have repeatedly affirmed Commerce’s decision to reject untimely filed new factual information.<sup>93</sup> Commerce has a long-established practice of refusing new information presented during on-site verifications of questionnaire responses in its proceedings.<sup>94</sup> This practice was also clearly conveyed to Chengen in the verification agenda issued prior to verification, which stated that “verification is not intended to be an opportunity for submission of new factual information.”<sup>95</sup> Verification presents a challenging balance of reviewing an entire record of information and analyzing data

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<sup>91</sup> See Declaration at 2-3.

<sup>92</sup> See *Ozdemir Boru San ve Tic. Ltd. Sti. v. United States*, 273 F. Supp. 3d 1225, 1242 (Ct. Int’l Trade 2017) (internal citations and quotations omitted).

<sup>93</sup> See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-1384 (Fed. Cir. 2003) (affirming Commerce’s decision to apply facts available with an adverse inference to a respondent that voluntarily submitted new factual information after the deadline); *Tianjin Machinery*, 353 F. Supp. 2d at 1304 (holding that Commerce was not required to accept new factual information after verification); *Uniroyal Marine Exports Ltd. v. United States*, 626 F. Supp. 2d 1312 (Ct. Int’l Trade 2009) (affirming Commerce’s decision to reject a respondent’s case brief containing untimely filed new factual information after respondent had failed to answer three notices for questionnaire responses); and *Hyosung Corp. v. United States*, No. 10-00114, 2011 WL 1882519 (Ct. Int’l Trade March 31, 2011) (affirming Commerce’s decision to reject new factual information included in questionnaire responses returned after the submission deadline).

<sup>94</sup> See, e.g., *Stainless Steel Wire Rods from India: Final Results of Antidumping Duty New-Shipper Review*, 73 FR 4828 (January 28, 2008), and accompanying IDM at Comment 1; and *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Determination of Sales at Less than Fair Value*, 83 FR 16296 (April 16, 2018), and accompanying IDM at Comment 1.

<sup>95</sup> See Chengen Verification Agenda at 2.

supporting the record under strict time limits. The CIT has explained that “{b}oth the statute and the regulation underscore the breadth of Commerce’s discretion in fashioning the temporal parameters of administrative proceedings, and force parties to submit information within a specified time frame in the interests of fairness and efficiency.”<sup>96</sup> The CIT has further explained that “Commerce’s policy of setting time limits on the submission of factual information is reasonable because Commerce clearly cannot complete its work unless it is able at some point to ‘freeze’ the record and make calculations and findings based on that fixed and certain body of information.”<sup>97</sup> Allowing parties the ability to, on their own initiative, submit new information at a stage as late as verification could not only jeopardize completion of the verification agenda but also threaten administrative finality as it would require that Commerce allow all parties an opportunity to comment on the new information and submit additional new factual information on the record – all at a point in the investigation when parties should be presenting Commerce with their final arguments in case and rebuttal briefs.<sup>98</sup> It is for this reason that Commerce’s regulations specify as one of the final deadlines for submission of factual information the earlier of 30 days before the preliminary determination in an investigation or 14 days before verification, whichever is earlier.<sup>99</sup>

At Chengen’s verification, upon return from the plant tour to the conference room where verification was being conducted, company officials presented verifiers with a thick packet containing a cover sheet and an amount of information that significantly exceeded the specific two pages observed on the plant tour and requested by the verifiers.<sup>100</sup> As noted by Chengen in

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<sup>96</sup> See *Tianjin Machinery*, 353 F. Supp. 2d at 1303-1304.

<sup>97</sup> *Id.* at 1304 (internal citations and quotations omitted).

<sup>98</sup> See 19 CFR 351.301 (providing timelines for interested parties to rebut new factual information submitted by other parties).

<sup>99</sup> See 19 CFR 351.301(c)(5).

<sup>100</sup> See Declaration at 2.

its ministerial error allegations after the *Final Determination*, “{d}uring the verification meeting, the company explained {and} did provide the **full text** of this Standard . . . .”<sup>101</sup> Verifiers identified this as new factual information beyond the scope of information Chengen had already submitted in its questionnaire responses.<sup>102</sup> The consequence of withholding the additional pages containing new factual information until verification was that interested parties were deprived of the opportunity to submit factual information to rebut Chengen’s claims as to the nature of the formula and accuracy of the conversion table, and Commerce was deprived the opportunity to issue supplemental questions and further develop the record. The failure to allow a detailed inquiry into these matters prevented Commerce from evaluating the formula and whether it yielded accurate measurements, and whether there are competing methodologies for calculating the volume of irregularly-shaped organic materials or whether this particular formula is broadly adopted and agreed upon. Verification was not the place to review numerous pages and enter into a detailed examination of the mathematical underpinnings of the conversion table and formula relied upon by Chengen’s workers and which Chengen refers to as the Chinese National Standard. Because Chengen attempted to submit unrequested new factual information in the extra pages attached to the conversion table and formula, Commerce properly exercised its discretion in returning the additional pages. Chengen did not comment on Commerce’s decision to decline to accept the additional pages at any point prior to its submission of ministerial error allegations after the *Final Determination*.<sup>103</sup>

In its ministerial error allegations after the release of the *Final Determination*, Chengen claimed that “{a}s the formulae and resulting volumes are self-evident results of a mathematical

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<sup>101</sup> See Chengen’s Ministerial Error Allegations at 3 (emphasis in original).

<sup>102</sup> See Declaration at 2-3.

<sup>103</sup> *Id.*; see also Chengen Ministerial Error Allegations at 3-4.

calculation, even if {Commerce} could credibly claim that it did not understand that this was a national standard, its conclusion that the table is unexplained or undocumented constitutes an error in arithmetic correctable as a ministerial error.”<sup>104</sup> However, contrary to Chengen’s claim, the formula is not “self-evident” and the record contains no explanation of the various components of the formula. The formula considers only two variables that the record identifies: length and small-end diameter.<sup>105</sup> In addition to those variables, the formula calculates values based on 0.7854 times the length of the log, 0.005 times the length of the log squared, 0.0000125 times the length of the log, 14 minus the length of the log squared, and diameter of the log minus 10 squared.<sup>106</sup> These calculations cannot be considered self-evident and the record contains no explanation regarding the relevance of these variables to calculating the volume of an irregularly shaped organic object. Chengen goes on to argue that because the formula is more complex than the simple formula for the volume of a cylinder, and results in a larger volume than the standard formula for a cylinder, Commerce clearly did not examine the record because it would have “understood that Chengen’s formula took into account more than the mere small diameter and length of the log . . . .”<sup>107</sup> However, simply because the formula is arguably complex and results in an amount larger than the calculation for the volume of a cylinder does not make it an accurate measure of the volume of the logs consumed by Chengen. Moreover, even if this formula were the Chinese National Standard, there is nothing on the record to suggest that it is a widely adopted standard, how many other competing standards or measurement methodologies exist, or the degree of accuracy of any of those methodologies or standards. Moreover, there is no information regarding how often this document is updated, whether it applies to all industries, or

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<sup>104</sup> See Chengen Ministerial Error Allegations at 4.

<sup>105</sup> See Chengen Verification Report at Verification Exhibit 26.

<sup>106</sup> *Id.*

<sup>107</sup> See Chengen’s Ministerial Error Allegations at 5.

whether it is an aide or a requirement for measuring logs in China. This is because Chengen deprived interested parties of the opportunity to supplement the record with additional, clarifying, or critical information regarding the formula.

In the litigation Chengen submitted new factual information regarding the provenance and function of the conversion table and formula that Chengen attempted to submit during the investigation in its rebuttal case brief and request to rescind the investigation.<sup>108</sup> Pursuant to 19 CFR 351.104(a)(2)(i)-(iii) and 19 CFR 351.302(d), Commerce properly rejected this new factual information and did not consider it in making its *Final Determination*.<sup>109</sup> In its plaintiff's brief, Chengen makes additional unsubstantiated assertions regarding Commerce's understanding of the conversion table and formula but does not cite record evidence to support its claims.<sup>110</sup> Furthermore, Exhibit 3 attached to Chengen's plaintiff's brief, which attempts to explain how the conversion table and formula operate, appears to be new factual information compiled specifically for the purposes of the litigation.<sup>111</sup> The new factual information and

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<sup>108</sup> See Chengen Plaintiff's Brief at 1 ("Linyi Chengen established that China, Europe, and North American standards for the purchase of log measure the diameter of the log 'inside the bark.'"), 3 ("One of the key items rejected from Linyi Chengen's rebuttal brief was a simple Excel table" through "was not on the record and constituted impermissible new factual information."), 8 ("Chief among Linyi Chengen's facts that were stricken were" through "the Chinese National standard relied upon by Linyi Chengen for the basis of its log 'material-in' records."), 18 ("The EU standard" through "the majority of rules in the United States for measuring log volume use the smaller end."), 21 ("Linyi Chengen also attempted to correct" through "The Department rejected this as new factual information."), and 24-25 ("The Department further acted arbitrarily in refusing to accept" through "where the petitioning coalition members were headquartered.").

<sup>109</sup> See Rejection of Untimely Filed New Factual Information in Rebuttal Brief; and Rejection of Request to Reconsider the Investigation.

<sup>110</sup> See Chengen Plaintiff's Brief at 2 ("The senior {Commerce} verifier...reviewed the warehouse records of input with reference to the table in the Chinese national standard and extensively and exhaustively verified that Linyi Chengen's reported log input corresponded to the cubic meter referenced in the table by the diameter and length of each log."), 15 ("A senior experienced {Commerce} verifier that had in fact led verifications in the 2010 Plywood investigation also led this verification and confirmed the accuracy and normalcy of Linyi Chengen's reporting of the log diameters."), 33 ("At verification {Commerce} observed Linyi Chengen's log delivery documentation and use of an internationally recognized standard for conversion."), and 34 ("Chengen's warehouse keeper used the actual Chinese standard table, as verified, and the same basis (using the smaller end diameter) is used around the world for this same purpose."); see also Chengen Reply Brief at 8.

<sup>111</sup> See Chengen's Plaintiff Brief at 16-17 and Exhibit 3.

unsubstantiated arguments that Commerce properly rejected and that Chengen has resubmitted in the litigation are not part of the administrative record. The submission of this information plainly disregards that the CIT has declined to consider evidence and arguments plaintiffs presented to it that were not contained in the administrative record of the underlying proceeding.<sup>112</sup>

The new factual information Chengen submitted to Commerce after verification and in this litigation simply distracts from the fact that Chengen failed to properly build the record regarding the accuracy of its log volume calculation methodology and substantiation of its log consumption. Months before Commerce issued its *Preliminary Determination*, Chengen was on notice that Commerce might apply the intermediate input methodology. It had ample opportunity to submit information demonstrating that the conversion table and formula are the Chinese National Standard and result in accurate log volume calculations. However, Chengen failed to do so, and its belated attempts after verification to prove the provenance and accuracy of the conversion table and formula occurred too late in the investigation. We continue to find that Chengen has not demonstrated that the conversion table and formula are the Chinese National Standard or that they yield accurate log volumes.

## **2. Third-Party Confirmation of Chengen's Reported Log Volumes**

As explained above, prior to verification Commerce understood from Chengen's questionnaire responses that the poplar suppliers provided Chengen with invoices for its purchased logs.<sup>113</sup> However, at verification, approximately five months after Chengen's supplemental response indicating that it recorded purchases based on invoices, Commerce

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<sup>112</sup> See *Kerr-McGee*, 985 F. Supp. at 1163-1166 ("For purposes of judicial review, the Court may consider only materials contained in the administrative record.").

<sup>113</sup> See Chengen's SuppD at 7.

learned that the suppliers did not provide commercial invoices to Chengen.<sup>114</sup> Instead, verifiers learned that the only documentation supporting Chengen’s poplar log purchases is documentation produced and maintained by Chengen itself: poplar log warehouse journals, poplar log warehouse-in tickets, poplar log receipts, and poplar log raw material ledgers.<sup>115</sup> The warehouse journal is a [ ] of the quantities of a material, in this case poplar logs, that entered Chengen’s inventory.<sup>116</sup> In addition to material entries, the warehouse journal also records the [ ] that were withdrawn from inventory, along with a running tally of the balance remaining in inventory and monthly subtotals.<sup>117</sup> The quantities recorded in the warehouse journal are supported by [ ] warehouse-in and warehouse-out tickets.<sup>118</sup> Chengen’s inventory is under the sole control of Chengen and, consequently, these documents are generated and maintained by Chengen alone. Although Verification Exhibit 26 lists documents identified by Chengen as “Poplar Log Purchase Invoices,” this label is misleading because it suggests that Chengen received commercial invoices from its suppliers for its log purchases, as one would expect in normal commercial transactions. However, the documents are not commercial invoices from suppliers but are, instead, *self-generated* receipts from Chengen to its suppliers. Chengen itself described these documents after the *Final Determination* as taxation invoices that it provided to its poplar suppliers.<sup>119</sup> Although Chengen also stated that the volumes in the taxation, or VAT, invoices were confirmed by its suppliers,<sup>120</sup> the record does not support the claim that the suppliers confirmed the VAT invoices generated

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<sup>114</sup> See Chengen Verification Report at 1 and 13.

<sup>115</sup> *Id.* at Verification Exhibit 26, Table of Contents.

<sup>116</sup> *Id.* at Verification Exhibit 26, pages 5-7.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at Verification Exhibit 26, pages 5-30.

<sup>119</sup> See, e.g., Chengen’s Ministerial Error Allegations at 6 and Exhibit 2 (Discussing record documentation pertaining to poplar logs and noting that “the company provided the farmers with *taxation invoices* stating the volumes, prices and values.”).

<sup>120</sup> *Id.* at 6-7, citing Chengen Verification Report at Verification Exhibit 26.

and issued by Chengen, nor did verifiers observe suppliers confirming the amounts recorded on the VAT invoices. Thus, the record contains no independently-measured documentation of poplar log volumes.

Commerce has a strong preference for substantiating information provided by respondents using independent sources that are not subject to our investigations or reviews because documentation wholly generated by and under the control of the respondent may be subject to manipulation or alteration. Neither Chengen’s warehouse materials generated by Chengen’s own production workers, nor the receipts provided by its production workers to its suppliers represent independent, third-party documentation. All of the aforementioned documents are generated entirely by Chengen and are maintained by, and constantly in the possession of, Chengen alone.

Chengen asserted in its ministerial error allegations and its submissions in this litigation that the poplar suppliers provided Chengen “delivery sheets” that stated the volume of the purchased logs.<sup>121</sup> However, Chengen failed to provide a record citation to these alleged “delivery sheets,”<sup>122</sup> asserting instead that “{t}he verification report and Final Determination fail to mention Linyi Chengen’s explanation that the farmers provide delivery lists of the logs and volume, which were then taken by the farmers to the main Linyi Chengen Accounting office for the preparation of an invoice and payment.”<sup>123</sup> Chengen’s claims that the suppliers provided delivery sheets with the volumes of purchased logs is not supported by record evidence. Indeed, neither Commerce’s verification report nor any other record evidence contains or makes reference to such delivery sheets. In its ministerial error allegations and submissions in this

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<sup>121</sup> *Id.* at 6; and Chengen Plaintiff’s Brief at 21.

<sup>122</sup> *Id.*

<sup>123</sup> *See* Chengen Plaintiff’s Brief at 9.

litigation, Chengen vaguely states that “the verifiers did not fully indicate all the details of their observations in the verification report, but did indicate: ‘the suppliers mark the diameter.’”<sup>124</sup> Chengen does not specifically state what was supposedly missing from the verification report (e.g., discussion of the alleged delivery sheets, or something else). Furthermore, as with the extra pages presented with the conversion table and formula, Chengen waited until its ministerial error allegations to allege for the first time that Commerce’s verification report was incomplete.

Commerce maintains that Chengen did not submit to the record any “delivery sheets” executed by the suppliers that would constitute third-party confirmation of Chengen’s log purchases, nor did it present any “delivery sheets” for review by Commerce verifiers at verification.<sup>125</sup> Rather, as explained in the verification report, the record demonstrates that Chengen took the measurement that the supplier marked on the narrow end of the log, calculated the volume of purchased logs using the conversion table, and then recorded that volume on warehouse in-tickets, which subsequently informed the amounts recorded in the warehouse journal.<sup>126</sup> Therefore, the log volumes and documentation recording those volumes, including the warehouse-in tickets, were generated by Chengen, not the poplar suppliers.

The *Remand Order* indicates that the Court understood the alleged “delivery sheets” to be synonymous with the “warehouse-in tickets.”<sup>127</sup> However, “delivery sheets,” as described by Chengen, and warehouse-in tickets (which are part of the administrative record) are two distinct types of documents. As explained above, delivery sheets are the documents Chengen alleges were provided by suppliers. Although these could potentially constitute third-party confirmation

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<sup>124</sup> See Chengen’s Ministerial Error Allegations at 6; Chengen Plaintiff’s Brief at 21; and Chengen Reply Brief at 12.

<sup>125</sup> See Declaration at 2.

<sup>126</sup> See Chengen Verification Report at 11-12.

<sup>127</sup> See *Remand Order*, Slip Op. 19-67 at 16 (“The Final Determination does not address the delivery sheets provided by suppliers (‘warehouse-in tickets’...)”).

of Chengen's log consumption, the record lacks evidence of the existence of such delivery sheets, and Chengen waited until after the conclusion of the investigation to make unsubstantiated arguments regarding conversations Chengen and verifiers purportedly had regarding those delivery sheets. In contrast, the record does contain copies of the warehouse-in tickets,<sup>128</sup> and the verification report explains that these were generated by Chengen<sup>129</sup> and thus do not constitute third-party corroboration of Chengen's log purchases.

Furthermore, the purported VAT invoices were also generated by Chengen, and not by a third party. Chengen concedes this in its rebuttal case brief and confirms the accuracy of Commerce's verification report, which states that the poplar suppliers do not provide invoices.<sup>130</sup> Specifically, Chengen cited to Commerce's verification report in stating:

It is true that...the farmers did not issue invoices to {Chengen} for poplar logs, because they cannot do that as individuals for the selling of poplar logs as agricultural products in the normal business. However, as a matter of practice, {Chengen} provided purchase invoices to those suppliers, as observed and verified.<sup>131</sup>

In its reply brief Chengen similarly conceded that “{C}ommerce is correct that the farmers delivering the poplar logs do not provide invoices themselves.”<sup>132</sup>

Chengen furthermore fails to demonstrate that the information contained in the invoices was confirmed by a third-party source. In its case rebuttal brief, Chengen asserts that the invoices were “verified and were concorded with Chengen's accounting records and materials ledgers.”<sup>133</sup> However, even if the invoices did match the contents of Chengen's books and

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<sup>128</sup> See Chengen Verification Report at Verification Exhibit 26.

<sup>129</sup> *Id.* at 11-12.

<sup>130</sup> *Id.* at 13.

<sup>131</sup> See Chengen's Rebuttal Brief at 15, citing Chengen Verification Report at 21 and Verification Exhibit 26 (poplar invoices).

<sup>132</sup> See Chengen Reply Brief at 11-12.

<sup>133</sup> See Chengen's Rebuttal Brief at 15.

records, that does not mean that the invoices were confirmed by a third-party source. As explained above, Chengen generated the warehouse-in tickets itself, which then formed the basis for the invoices.<sup>134</sup> Verification Exhibit 26 illustrates this document flow and demonstrates that all of the documentation was produced after delivery of the logs to Chengen’s affiliated producer, Dongfangjuxin, and was generated by either Chengen or Dongfangjuxin.<sup>135</sup> Specifically, page 5 contains the [ ] poplar log warehouse journal with an entry of [ ] on [ ], which is supported by the underlying warehouse-in ticket at page 9, on which the same quantity and date is [ ].<sup>136</sup> Page 30 of the same exhibit contains an accounting voucher generated on [ ] for the same [ ] of poplar logs and shows the amount payable to [ ].<sup>137</sup> That accounting voucher is supported by [ ]<sup>138</sup> underlying VAT invoices on pages 31 through 53, also dated [ ] and made out to [ ] and stamped by Dongfangjuxin.<sup>139</sup> Page 54 then shows the same quantity and value booked to Chengen’s raw material ledger, also on [ ].<sup>140</sup> Consequently, the record indicates that the VAT invoices were generated by Chengen as part of its own accounting process and the volumes contained in the invoices were calculated solely by Chengen, and not by any third party.

In its ministerial error allegations Chengen makes further assertions that fail to demonstrate that the invoices were confirmed by a third party. Specifically, Chengen alleges:

{Chengen} provided the farmers with **taxation invoices** stating the volumes, prices, and values... . As the verifiers were aware, the invoices were official: they were titled “Shandong VAT invoices” with the stamp of “State Taxation Bureau.” Further, it was clear to the verifiers that they were ‘confirmed’ invoices

<sup>134</sup> See Chengen Verification Report at Verification Exhibit 26.

<sup>135</sup> See *Preliminary Determination* PDM at 22, unchanged in *Final Determination*.

<sup>136</sup> See Chengen Verification Report at Verification Exhibit 26, pages 5 and 9.

<sup>137</sup> *Id.* at 30.

<sup>138</sup> *Id.* at 31-53 ([ ] totaling [ ]).

<sup>139</sup> *Id.* at 32 (compare characters translated as [ ] with [ ]).

<sup>140</sup> *Id.* at 54.

by the outside parties, *i.e.*, the suppliers, rather than {unilaterally} dictated by Chengen. Indeed, apart from being contradicted by the verification report and exhibits, it simply defies common sense that a seller would dump a load of raw material at a factory without any knowledge of the amount they sold; and that the supplier would then accept the formal tax invoice with random volumes on it. However, {because} logs were sold in cubic meters (and priced per cubic meters),...the volume would be critical for the suppliers as well as for Chengen. How could suppliers not care about the volumes they sold considering that they would...get paid against the values by volumes unit price?<sup>141</sup> (emphasis in original)

These arguments, which Chengen reproduced, in part, in its plaintiff's brief and reply brief,<sup>142</sup> attribute subjective mental impressions to the verifiers, make speculative assertions about the business practices of suppliers, and draw conclusions that are not supported by record evidence.

Furthermore, the invoices to which Chengen refers contain minimal translations:

[ ] and what appears to be [ ]  
];<sup>143</sup> there is no indication that the documents are titled "Shandong VAT invoices" or that they are stamped by the "State Taxation Bureau." However, an examination of the characters translated as [ ] indicates that the only party that Commerce can confirm stamped the invoices was Dongfangjuxin itself.<sup>144</sup> Furthermore, Chengen does not cite record evidence demonstrating that the invoices were corroborated by a third party. As

Commerce stated in its ministerial error memorandum in response to Chengen's assertions:

Chengen alleges, without citation to the record, that it was clear to the verifiers that the invoices were official and were 'confirmed' invoices by the suppliers, rather than unilaterally dictated by Chengen. Contrary to Chengen's assertion, we considered the record evidence cited by Chengen in making our finding that we were unable to corroborate the log volumes recorded in Chengen's records against any third-party sources.<sup>145</sup>

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<sup>141</sup> See Chengen's Ministerial Error Allegations at 6-7, citing Chengen Verification Report at Verification Exhibit 26.

<sup>142</sup> See Chengen Plaintiff's Brief at 22; and Chengen Reply Brief at 12.

<sup>143</sup> See, *e.g.*, Chengen Verification Report at Verification Exhibit 26, page 32.

<sup>144</sup> *Id.*

<sup>145</sup> See Ministerial Error Memorandum at 6.

Contrary to Chengen's claims, Chengen generated the VAT invoices itself based on the warehouse in-tickets and accounting vouchers, which contained volumes Chengen also calculated on its own using the conversion table and formula. The verification report and exhibits do not, as Chengen alleges, contradict Commerce's determination that the invoices do not constitute third-party corroboration of Chengen's reported log volumes and the record does not support the claim that the suppliers "confirmed" the VAT invoices generated and issued by Chengen. As explained above, Chengen failed to substantiate that the conversion table and formula result in an accurate log measurement. Therefore, without third-party confirmation of the amounts reported in the invoices, which contain volumes derived from the conversion table and formula, Commerce is unable to determine that Chengen's reported log consumption is accurate.

Chengen also claims in its briefs before the CIT that Commerce's verification report omits conversations at verification in which Chengen explained to Commerce that the suppliers did not prepare invoices because they do not have the legal status to do so.<sup>146</sup> Not only is there nothing on the record to substantiate Chengen's claims regarding the ability of suppliers to generate their own invoices, but Chengen's assertions do not constitute evidence of third-party corroboration for Chengen's reported log consumption. Furthermore, Chengen's belated and unsubstantiated challenges to the contents of Commerce's verification report, not raised until after the conclusion of the investigation, suggests that Chengen is simply unhappy with the results of Commerce's *Final Determination*. However, Chengen's dissatisfaction does not mean that Commerce's *Final Determination* was not supported by substantial evidence.

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<sup>146</sup> See Plaintiff's Brief at 9; and Chengen Reply Brief at 12.

Given that Chengen did not substantiate the accuracy of its log volume calculations, independent, third-party documentation of its reported log consumption is of critical import to Commerce's ability to determine that the reported log volumes result in an accurate margin. However, as mentioned above, Chengen omitted from any of its numerous submissions and pages of argument that Chengen was in control of calculating its purchase quantities and generating its purchase documentation, which relied on a conversion table and formula that was based on a mathematical formula involving measurements of a log from the smaller end to derive log volumes.<sup>147</sup>

Accordingly, we continue to find that Commerce acted appropriately in disregarding Chengen's log consumption data and instead relying on the intermediate input methodology, because Chengen failed to accurately disclose the facts regarding its reported log consumption rates and the documents maintained in the normal course of business.

### **III. DRAFT REMAND CONCLUSION**

Based on the foregoing, and pursuant to the CIT's *Remand Order*, in the draft remand we considered the record evidence and provided further explanation as to why Chengen's record documentation was insufficient to substantiate Chengen's poplar log consumption. We also provided an explanation for our decision to accept the conversion table and formula, but to reject the additional pages containing new factual information that Chengen presented at verification. In these Final Results of Redetermination, we continue to maintain that the conversion table and formula used by Chengen to calculate and report its log consumption volumes are not supported by, or grounded in, any record evidence that would allow us to determine that they result in an accurate measure of Chengen's log consumption during the period of investigation.

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<sup>147</sup> See Chengen Verification Report at Verification Exhibit 26.

Furthermore, we continue to find that the record lacks third-party confirmation of Chengen's log consumption. Accordingly, we will continue to apply the intermediate input methodology to value Chengen's consumption of veneers, rather than its log FOPs. Because we are not changing Chengen's margin as a result of this redetermination, we are also not revising the rate for the separate rate companies.

#### **IV. SUMMARY AND ANALYSIS OF COMMENTS FROM INTERESTED PARTIES**

On July 19, 2019, Commerce uploaded to ACCESS the Draft Results of Redetermination and invited parties to comment on the Draft Results of Redetermination.<sup>148</sup> On August 5, 2019, the petitioner, Chengen, Taraca Pacific, and Dehua TB submitted comments.<sup>149</sup> No other interested party submitted comments.

In its comments, the petitioner expressed support for our Draft Results of Redetermination, stating that the draft results appropriately responded to the CIT's concerns and urging that we issue final remand results consistent with the draft results.<sup>150</sup> Dehua TB's comments expressed support for the comments filed by Chengen with respect to our draft remand,<sup>151</sup> and Taraca Pacific adopted by reference the comments by Chengen and the other interested parties regarding the recalculation of Chengen's rate and the separate rate.<sup>152</sup> Chengen argued that Commerce verifiers improperly accepted the conversion table and formula while rejecting additional pages as new factual information at verification, that its log purchase records are official and reliable, and that the formula it used to calculate its log volumes is a reliable

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<sup>148</sup> See Draft Results of Redetermination.

<sup>149</sup> See Petitioner's Draft Comments; Chengen's Draft Comments; Taraca Pacific's Draft Comments; and Dehua TB's Draft Comments (Dehua TB et al.'s comments state that they "join in and incorporate by reference the comments filed by Chengen with respect to the Department's draft remand results.").

<sup>150</sup> See Petitioner's Draft Comments.

<sup>151</sup> See Dehua TB's Draft Comments.

<sup>152</sup> See Taraca Pacific's Draft Comments.

industry standard.<sup>153</sup> Chengen also included three declarations from an attorney and two company officials that were present at verification that contest a number of statements in the analyst declaration released with the Draft Results of Redetermination.<sup>154</sup>

As a prefatory matter, we note that throughout Chengen’s Draft Comments it makes liberal use of claiming to know what Commerce knows or what details were clearly explained to the verifiers.<sup>155</sup> However, these comments are pure speculation and are not rooted in any factual or objective information. Similarly, the attorney declaration attached to Chengen’s Draft Comments at Exhibit 1 makes the claim that the recollections recounted in the analyst declaration released with the Draft Results of Redetermination were incomplete, incorrect, or plainly wrong.<sup>156</sup> To the extent that Chengen’s declarant recalls the details of the September 2017 verification differently than the analyst’s declaration, we maintain that the events and details as presented in the analyst declaration are true and accurate to the best of the analyst’s recollection.

### **Issue 1: Whether Commerce Properly Accepted the Conversion Table and Formula at Verification while Rejecting the Additional Pages as New Factual Information**

#### *Chengen’s Comments:*

- Commerce faults Chengen for not building the administrative record in its questionnaire responses and responses to the petitioner’s comments on the intermediate input methodology, by failing to provide the conversion table and formula used to calculate log volume, and by not disclosing that it did not receive invoices from its poplar suppliers. However, Commerce

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<sup>153</sup> See Chengen’s Draft Comments.

<sup>154</sup> *Id.* at Exhibits 1-3.

<sup>155</sup> See, e.g., Chengen’s Draft Comments at 11 (“{Commerce} is certainly aware that small businesses in general, and individual farmers in particular, are not allowed to issue VAT invoices . . . The farmers that deliver the poplar logs to Chengen’s production facilities are not allowed to buy or use such invoices, as was clearly explained to the verifiers.”).

<sup>156</sup> *Id.* at Exhibit 1.

never asked for Chengen's log purchase documents and did not, pursuant to its obligations under section 782(d) of the Act, identify any related deficiencies in Chengen's questionnaire responses or provide Chengen with an opportunity to remedy those deficiencies. Chengen fully and correctly answered all of Commerce's questionnaires, and Commerce's observations at verification, as supported by the verification report, did not contradict the information Chengen provided in its questionnaire responses.<sup>157</sup>

- Commerce asked for purchase invoices for several other material inputs, log warehouse-out slips, raw material ledgers, documentation of production processes, monthly consumption worksheets for raw materials, and full reconciliations for workshops, including the core veneer cutting workshop. Commerce could have asked for the same documentation for the main raw materials.<sup>158</sup>
- Commerce states in its draft remand that the petitioner's comments early in the investigation put Chengen on notice that Commerce might apply the intermediate input methodology, and that Chengen should have submitted documents related to its log volume calculation. However, the petitioner's comments prior to verification had nothing to do with log volume calculations, but rather related to Chengen's yield loss ratios.<sup>159</sup>
- The petitioner's case brief was the first time a party alleged that measuring a log at the top diameter is inherently imprecise, and Commerce should have rejected the petitioner's arguments as new factual information or an allegation unsupported by record evidence. In contrast, Commerce improperly rejected Chengen's rebuttal brief to the petitioner's comments as containing new factual information. If Commerce was concerned about issues

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<sup>157</sup> *Id.* at 1-3.

<sup>158</sup> *Id.* at 2.

<sup>159</sup> *Id.* at 4.

raised in the case briefs, it should have reopened the record to resolve the matter, as it has done in other proceedings in which a petitioner challenges a respondent's data.<sup>160</sup>

- Commerce also claims that the conversion table and formula, and Chengen's assertion that they are the Chinese National Standard, consisted of new factual information presented at verification. However, almost all information collected at verification is technically new information in that documents previously absent from the record are taken to more fully understand and verify data submitted to the record. Verification of only existing record documents would serve no purpose. The verification exhibits in this investigation contain documents that were not previously on the record or requested by Commerce, including raw material purchase documents such as poplar purchase documents. A formula or conversion table and information about those items is not different from other information collected at verification.<sup>161</sup>
- The analyst's declaration states that Chengen presented it with the two-page conversion table, a cover sheet, and additional pages of documentation. However, the declaration only states that verifiers understood the "additional documentation" to be new factual information and does not explain what happened to the cover sheet.<sup>162</sup>
- The analyst's declaration that verifiers did not request an explanation of the additional documentation because it was new factual information is contradicted by Commerce's practice. Commerce routinely asks company officials to explain standards used by the company in the normal course of business. Chengen's draft remand comments contain a

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<sup>160</sup> *Id.* at 3-6.

<sup>161</sup> *Id.* at 6.

<sup>162</sup> *Id.* at 6-7.

declaration by its counsel who references and attaches numerous verification reports documenting instances where verifiers requested and discussed standards and conversions.<sup>163</sup>

- Commerce makes an arbitrary claim in stating that because the two pages accepted at verification are the basis for the formula used to convert log volumes, those pages support Chengen’s reported log volumes, while the rest of the documentation explaining the standard is new information, and not supporting information. The cover page containing the title of the standard and explanation of the two pages have the same function as the two pages – supporting or collaborating information.<sup>164</sup>

*Taraca Pacific’s Comments:*

- In severing the conversion table and formula from the additional pages of the same document, Commerce illogically deemed the same document relevant for clarifying Chengen’s log reporting and irrelevant for the same purpose of clarifying the nature of the conversion table and formula.<sup>165</sup>
- Commerce accepted information that was damaging to Chengen without considering that there is no provision in the law that allows Commerce to selectively consider only new information that inflates margins and not information that may have the opposite effect.<sup>166</sup>
- If the log conversion information was “new,” Commerce should not have even considered the few pages it did accept, and it should instead consider all of the information related to the log conversion.<sup>167</sup>

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<sup>163</sup> *Id.* at 7-10 and Exhibit 1.

<sup>164</sup> *Id.* at 10.

<sup>165</sup> *See* Taraca Pacific’s Draft Comments at 4.

<sup>166</sup> *Id.* at 4-5.

<sup>167</sup> *Id.* at 5.

- Commerce’s verification agenda directed Chengen as follows: If a conversion factor was used to convert units of measure maintained in the ordinary course of business to units of measure requested by or reported to Commerce, provide an explanation of the formula used and examples of the conversion. Therefore, Commerce improperly rejected information it expressly requested.<sup>168</sup>
- As Commerce noted in the draft remand, it accepts new information at verification when the need for that information was not evident previously, it makes minor corrections to the record, **or** it corroborates, supports or clarifies the record. Because only one of these conditions need to be satisfied, Commerce was bound to accept the additional pages explaining the basis for the conversion table and formula, which clearly corroborate, support, or clarify Chengen’s reported log FOPs.<sup>169</sup>
- Although Commerce refuses to allow Chengen to clarify the nature of the conversion table and formula, it holds itself to a more relaxed standard, introducing new information in the form of an analyst declaration at this late stage and without the Court’s permission to reopen the record.<sup>170</sup>

*Commerce’s Position:*

For the reasons described below, we disagree with Chengen and Taraca Pacific’s argument that verifiers improperly accepted the conversion table and formula at verification but rejected the additional documentation proffered by Chengen.

Chengen claims that nowhere in the record did Chengen fail to provide information requested by Commerce and that Commerce had an obligation under section 782(d) of the Act to

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<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 6.

<sup>170</sup> *Id.*

notify Chengen of any deficiencies and provide Chengen an opportunity to remedy those deficiencies.<sup>171</sup> According to section 782(d) of the Act, if Commerce determines that a response to a request for information does not comply with the request, Commerce “shall promptly inform the person submitting the response of the nature of the deficiency and shall, *to the extent practicable*, provide that person with an opportunity to remedy or explain the deficiency *in light of the time limits established for the completion of investigations ...*” (emphasis added). The CIT has upheld Commerce’s decision to not provide a party an opportunity to remedy deficient questionnaire responses when those deficiencies did not become apparent until verification and Commerce would not have had time to consider new information at that stage of the investigation.<sup>172</sup> Similarly in this case, the deficiencies described in the *Final Determination* and Draft Results of Redetermination were not identified until verification, when Commerce learned for the first time that Chengen’s poplar suppliers do not provide invoices and that Chengen used a previously undisclosed conversion table and formula to calculate its log volume. Therefore, we could not have requested information in a supplemental questionnaire that we were unaware existed or that was missing from Chengen’s responses submitted prior to verification. Furthermore, accepting new information at verification would have been too late in the investigation for Commerce to properly evaluate that information or to allow for comments on this new information by other interested parties.

Chengen asserts that we requested comprehensive documentation for several other material inputs and further claims that we should have asked for the same documentation for its primary inputs.<sup>173</sup> Although Chengen does not provide specific record citations to support its

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<sup>171</sup> See Chengen’s Draft Comments at 1-3.

<sup>172</sup> See *Dongguan Sunrise Furniture Co., Ltd. v. United States*, 865 F. Supp. 2d 1216, 1231-1232 (Ct. Int’l Trade 2012).

<sup>173</sup> See Chengen’s Draft Comments at 2.

claim, Commerce submits that Chengen had numerous opportunities to explain that it used a conversion table and formula when accepting its logs at its facility and when booking those materials into its production records. Specifically, we asked for a list of **all** documents used or relied upon by the producer, regardless of whether such information is reflected in the overall accounting system.<sup>174</sup> In response, Chengen identified “Material purchase invoices,” which we understood to be supplier invoices, and a number of subledgers, journals, tickets, and worksheets.<sup>175</sup> The conversion table or calculation formula was not listed. We asked Chengen to “provide a detailed explanation and supporting documentation for how {Chengen} records the purchase and consumption of each input in the normal course of business.”<sup>176</sup> In response, Chengen stated that “{w}hen the materials are delivered, the warehouse people issue a warehouse-in ticket and enter into materials warehouse journals. The accountants record purchases according to the warehouse-in tickets and invoices in the normal business at a given month in the normal course of accounting.”<sup>177</sup> Instead of explaining its process for accepting and recording its logs, Chengen gave a general response and provided no supporting documentation. We asked Chengen to explain how it “normally records units of consumption, work in process, outputs and finished goods in its books and records and to submit supporting documentation.”<sup>178</sup> Instead of submitting documentation explaining how it records its consumption amounts, Chengen simply submitted a list of units of measurement for its inputs.<sup>179</sup> Thus, we do not find Chengen’s assertion that Commerce should have asked for the documentation it required to be persuasive because we repeatedly requested detailed descriptions and documentation regarding

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<sup>174</sup> See Chengen’s SDQR at 5.

<sup>175</sup> *Id.*

<sup>176</sup> See Chengen’s SuppD at 7.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 4.

<sup>179</sup> *Id.* at Exhibit SQ5-5.

Chengen's methods of recording purchases and consumption and Chengen had numerous opportunities to provide the information that it now claims we did not request.

We disagree with Chengen's assertion that the petitioner's allegation in its case brief that "measuring a log at its narrow diameter is imprecise" constitutes new factual information that Commerce should have rejected.<sup>180</sup> The fact that Chengen measured logs at the narrow end was clearly on the record prior to the submission of case briefs.<sup>181</sup> Petitioner's argument that a measurement from the smaller end of the log would produce an inaccurate result is simply argument that relies on record facts about Chengen's log measurement practice. Furthermore, we reiterate that our determination to apply the intermediate input methodology did not result solely from the petitioner's case brief comments, but rather all information on the record, including our observations at verification.<sup>182</sup> Chengen also claims disparate treatment in Commerce's decision not to reject the petitioner's case brief but to reject Chengen's rebuttal case brief for containing new factual information in the form of a mathematical formula to calculate the volume of a cylinder.<sup>183</sup> However, Chengen had no objections when Commerce rejected the petitioner's comments on Chengen's questionnaire responses for containing the exact same formula, which we deemed to be new factual information.<sup>184</sup> The preceding also illustrates the consistency with which we treated mathematical formulae in this investigation, which extended to the formula first presented by Chengen at verification.

Chengen claims that the reason it did not address the log delivery and log volume calculation was because the petitioner's reasons prior to verification for urging Commerce to

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<sup>180</sup> See Chengen's Draft Comments at 3-4.

<sup>181</sup> See, e.g., Chengen Verification Report at 11 ("Company officials explained that it is industry standard to measure the log diameter from the smaller end of the log.").

<sup>182</sup> See *Final Determination* IDM at 23.

<sup>183</sup> See Chengen's Draft Comments at 3-4.

<sup>184</sup> See Commerce's Letter, "Rejection of Untimely Filed Factual Information," dated May 26, 2017.

apply the intermediate input methodology focused on yield loss ratio.<sup>185</sup> However, the overarching issue in question in those pre-verification comments was the accuracy of Chengen's reported log consumption, and the petitioner made a number of claims regarding Chengen's methods for recording and reporting log consumption quantities.<sup>186</sup> Accordingly, Chengen was on notice that it should have submitted a full accounting of its process for recording and reporting its log volumes.

Chengen provided documentation and verification reports from seven other cases in which Chengen claims that verifiers reviewed documentation related to conversion factors, internationally recognized standards for chemical concentrations, and steel mechanical properties.<sup>187</sup> However, the record does not indicate the extent to which each of the cases cited by Chengen contained prior discussion and documentation of the conversion factors, chemical concentration standards, or steel property standards that were the subject of scrutiny at verification. Moreover, at least one example undermines Chengen's claim in that it demonstrates that verifiers examined information at verification related to information and issues raised prior to the verification. In the verification report from the antidumping duty investigation of cold-drawn mechanical tubing from the Republic of Korea, cited by Chengen, verifiers reported that they "reviewed the ASTM codes and grade chart from Yulchon's responses."<sup>188</sup> The report makes it clear that the ASTM codes and grade chart in that case were clearly known to verifiers prior to verification and consisted of information reported in the respondent's submissions, which is in stark contrast to this case. Each administrative record stands on its own, and in this investigation Chengen did not build a record that established the provenance and accuracy of the

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<sup>185</sup> See Chengen's Draft Comments at 4.

<sup>186</sup> See, e.g., Petitioner's Letter, "Pre-Preliminary Comments," dated May 30, 2017, at 22-33.

<sup>187</sup> See Chengen's Draft Comments at 6-10 and Exhibit 1.

<sup>188</sup> *Id.* at Exhibit 1, Attachment 5.

conversion table and formula. Moreover, to the extent that we requested and collected documentation regarding Chengen's material inputs at verification, such documentation served as supporting documentation for the information that Chengen had already provided.

We disagree with Chengen and Taraca Pacific's argument that Commerce makes an arbitrary distinction in treating the two pages collected at verification as information supporting Chengen's data, while characterizing the additional documentation as impermissible new factual information.<sup>189</sup> As explained in these remand results, the conversion table and formula demonstrated how Chengen calculated the log volumes reported in its questionnaire responses and was therefore tied to information already on the record. We also observed use of the conversion table during verification and specifically requested a copy of the two pages containing the table. In contrast, the cover page and additional pages that purportedly explain the provenance and methodology underlying the conversion table and formula were new factual information that Chengen should have submitted prior to verification and were information that Chengen sought, of its own accord, to submit to the verifiers. Had Chengen reported that it used a conversion formula to calculate its log consumption volume prior to verification, we would not only have had the opportunity to request the formula and explanation prior to verification, but would also have had the opportunity to examine that formula, and underlying standard, in detail at verification. Moreover, we declined to take the cover sheet presented by company officials for the same reason that we declined to take the additional documentation; we were focused on the documentation observed on the plant tour that Chengen used to calculate log volumes but

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<sup>189</sup> See Chengen's Draft Comments at 10; Taraca Pacific's Draft Comments at 4. Although Chengen takes issue with the fact that the analyst declaration only identifies the "additional documentation" as new factual information and makes no reference of the cover sheet, we consider the "additional documentation" presented at verification to encompass the additional pages as well as the cover sheet. See Chengen's Draft Comments at 6-7.

recognized that the time to conduct an in-depth analysis of a previously unknown formula had passed.

Taraca Pacific's claim that we selectively accepted information based on the end result<sup>190</sup> incorrectly presumes that verifiers know the ultimate effect of information collected at verification and ignores the fact that our proceedings are governed by a lengthy and transparent process that takes into consideration the record evidence and the arguments of interested parties.

Taraca Pacific overlooks the obvious in contending that we expressly requested the information which we then refused to take because the verification agenda specifically requests an explanation of a formula used and examples of the conversion for any conversion from units of measure maintained in the ordinary course of business to units requested by or reported to Commerce.<sup>191</sup> However, the conversion table and formula observed at verification is not the type of conversion formula contemplated in the verification outline because it was not used by Chengen to convert units of measure maintained in the ordinary course of business to those units reported to Commerce; the units of measure maintained by Chengen were cubic meters, as was the data reported to Commerce.<sup>192</sup> Instead, the conversion table and formula represent a calculation that was carried out in order to derive the data recorded in Chengen's books and records that were reported to Commerce and, as such, we would have had no way of knowing that we should have requested an explanation of this process.

Although Taraca Pacific claims that Commerce is holding itself to a more relaxed standard than respondents by introducing new information at this stage of the litigation, we have the authority to reopen the record on remand. As explained elsewhere in this remand, we

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<sup>190</sup> See Taraca Pacific's Draft Comments at 4-5.

<sup>191</sup> *Id.* at 5-6.

<sup>192</sup> See, e.g., Chengen Verification Report at Verification Exhibit 26.

considered it necessary to place new information on the record in order to respond to the Court's order. However, we also allowed all interested parties an opportunity to comment on the new factual information and to provide rebuttal information in their comments on the draft remand.<sup>193</sup>

## **Issue 2: Whether Chengen's Log Purchase Records are Official and Reliable**

### *Chengen's Comments:*

- Commerce's experience conducting AD proceedings and verifications provides the institutional knowledge to know that small businesses, particularly individual farmers, are not allowed to issue VAT invoices and that such invoices are controlled by the Chinese authorities.<sup>194</sup>
- All VAT invoices must be generated on preapproved forms provided by the tax authorities, which allows the government of China to track all VAT payments and compliance and provides proof of purchase of goods or services.<sup>195</sup>
- Companies provide a copy of the invoice to the government, to the supplier, and retain a copy for their own internal records.<sup>196</sup>
- Chengen's VAT invoices were accepted and confirmed by the suppliers, audited by certified public accountants, and supervised and certified by the government taxation authority, which constitutes third-party corroboration.<sup>197</sup>
- Farmers bring informal delivery sheets with their log deliveries, which the warehouse staff uses to generate warehouse in-tickets containing the cubic meters of the delivered logs.

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<sup>193</sup> See Section II.A., *supra*.

<sup>194</sup> See Chengen's Draft Comments at 11.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 12.

<sup>197</sup> *Id.*

Farmers bring the “confirmed” warehouse-in tickets to the main administrative office in exchange for a VAT invoice for payment.<sup>198</sup>

- The accounting office checks the quantity in cubic meters with the warehouse to ensure that the warehouse agreed and then issues the “Purchaser” VAT invoices to the farmers.<sup>199</sup>
- Chengen submitted the domestic laws governing VAT early in the proceeding and Commerce should have been aware that “purchaser invoices” are issued by the purchaser in transactions for agricultural products. Therefore, Commerce was incorrect in its assumption that the poplar suppliers should have provided invoices as sellers.<sup>200</sup>
- The invoice generated by Chengen against the seller’s copy of the warehouse in ticket, which itself was a non-controverted record of the cubic meters sold by the seller based on their delivery notice, is an official government document and accounting record. There is a presumption of regularity for such documents.<sup>201</sup>
- Commerce is mistaken that there is no third-party validation of Chengen’s invoices because the seller accepts the invoice as part of the transaction and that invoice becomes a core document in Chengen’s audited accounting system and is then sent to the Chinese tax authority individually and as parts of financial statements and tax returns. A third-party bank or company pays the supplier against the invoice.<sup>202</sup>
- Chengen’s suppliers of birch and eucalyptus logs for face veneers did provide VAT invoices themselves and used the small end diameter and the same industry standard to calculate the cubic meter quantities.<sup>203</sup>

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<sup>198</sup> *Id.* at 12, 18, 25, and Exhibit 1 Declaration at 3.

<sup>199</sup> *Id.* at 12.

<sup>200</sup> *Id.* at 12-14.

<sup>201</sup> *Id.* at 14.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at 15.

- Commerce argues that the intermediate input methodology is more accurate and reliable in this case. However, in contrast to the records for log purchases and consumption, there are no third parties involved in the production of veneers, and no invoices, because Chengen's veneer production is an internal operation measured entirely on theoretical dimensions. The veneers were counted by pieces, and converted to cubic meters by the length, width, and nominal thickness, while the actual thickness could have been lower than the nominal thickness.<sup>204</sup>
- Log FOPs would be much more accurate, reliable, and corroborated with more third-party involvement than veneer FOPs (intermediate input methodology).<sup>205</sup>
- Even if we accept that the log conversion is inherently imprecise, despite being based on an industry standard, Chengen's veneer conversion based on standard dimensions was definitely imprecise and would not serve to enhance accuracy.<sup>206</sup>
- Commerce erred in stating that Chengen's production manager calculates and records the volume of delivered logs using the conversion table and formula. Rather, it is the farmers who use this industry standard to calculate the log volumes they record on the delivery sheets. The Chengen warehouse manager uses the conversion table and formula simply to confirm the volume of logs as stated on the delivery sheets, which are then recorded on the warehouse in-tickets. As such, the conversion table is not an original accounting document, but rather a document that assists Chengen in confirming that the sellers state accurate log volumes in their payment requests. Therefore, contrary to the claims in the draft remand, Chengen did not convert the logs by itself for reporting FOPs and it did not rely on a new

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<sup>204</sup> *Id.* at 15-16.

<sup>205</sup> *Id.* at 17.

<sup>206</sup> *Id.*

document, the conversion table, that Commerce alleges it would have needed to report as part of Section D. Instead, Chengen reported FOPs based on material-in tickets, material-out tickets, and VAT invoices maintained in the normal course of business.<sup>207</sup>

- It is not necessary to rely on the Chinese National Standard for reporting log consumption because it was only used to *verify* the cubic meter purchase volumes and because the actual cubic meters consumed were fully reported and verified.<sup>208</sup>
- Commerce rarely asks for delivery notes and companies do not keep them as part of their accounting records because the purchase invoices that are formally recognized and presented to the government of China are superior. That is why the document never came up prior to verification and also the reason why the verifiers did not ask to review or acquire sample delivery notices.<sup>209</sup>

*Taraca Pacific's Comments:*

- Commerce cites to no legal authority that would require third-party confirmation to corroborate data reported by a respondent.<sup>210</sup>
- Chengen provided and Commerce verified the primary sources used by Chengen to compile its FOP data, the VAT invoices.<sup>211</sup>
- Commerce ignores that the VAT invoices were financial documents that tied to Chengen's overall accounting system, and Commerce found no discrepancies with respect to Chengen's accounting system.<sup>212</sup>

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<sup>207</sup> *Id.* at 2-3, 17-18, and Exhibit 1 Declaration at 3 and 5-6.

<sup>208</sup> *Id.* at 17-18.

<sup>209</sup> *Id.* at 18.

<sup>210</sup> *See* Taraca Pacific's Draft Comments at 7.

<sup>211</sup> *Id.* at 7-8.

<sup>212</sup> *Id.*

- Commerce was able to verify Chengen’s reported labor information despite only examining documents generated by Chengen and did not require third party documentation.<sup>213</sup>
- Although Chengen provided third-party invoices for its birch and eucalyptus FOPs, Commerce still employed the intermediate input methodology for those inputs.<sup>214</sup>

*Commerce’s Position:*

We disagree with Chengen and Taraca Pacific that the documentation generated by Chengen is a sufficient substitute for third-party independent source documentation.

Chengen argues that because the VAT regulations were submitted early in the investigation, Commerce should have been aware that “purchaser invoices” are issued by the purchaser in transactions for agricultural products.<sup>215</sup> Chengen claims that the interim VAT regulations “specifically state {} that for agricultural products, a special invoice obtained from the seller is not required.”<sup>216</sup> In support, Chengen quotes from Article 8 of the submitted regulations:

For purchase of agricultural produces, except for obtaining the special VAT invoices or the special letter of payment of duties of customs import VAT, the input tax shall be calculated on the basis of the purchase price indicated in the invoices for purchase of agricultural products and at the deduction rate of 13%.<sup>217</sup>

However, the plain language of the quoted text appears to state only that the tax rate for agricultural products is 13 percent of the purchase price and does not speak to whether the seller or the purchaser produces the invoice. Moreover, the text quoted by Chengen was from the 2008 Interim VAT Regulations and, therefore, were not the final implemented regulations in effect

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<sup>213</sup> *Id.* at 8-9.

<sup>214</sup> *Id.* at 9.

<sup>215</sup> *Id.* at 12-14.

<sup>216</sup> *Id.* at 13.

<sup>217</sup> *Id.*; see also Chengen’s February 28, 2017, Section C Questionnaire Response (Chengen’s SCQR) at Exhibit C-3, “Interim Regulations of the People’s Republic of China on Value Added Tax” (2008) at Article 8.

during the POI.<sup>218</sup> Indeed, we requested, and Chengen submitted, the VAT tax regulations that were in effect during the POI, but those regulations were specific to exported goods and not to domestically sold goods.<sup>219</sup>

Furthermore, because the VAT invoices Chengen cites do not contain an itemization for VAT tax, it is unclear how the interim Chinese VAT laws dictate how Chengen is required to generate these documents.<sup>220</sup> The declaration included in Chengen’s Draft Comments described the differences between a seller and purchaser VAT invoice, and included a sample poplar invoice and a sample birch invoice.<sup>221</sup> Specifically, the declaration identified certain Chinese characters in the upper left hand of the poplar invoice that, according to the declarant, indicate “purchase,” and a VAT rate of 13 percent in the lower right hand of the purchaser invoice. Meanwhile, according to the declaration, the birch seller VAT invoice contains the name of the company and the stamp of the supplier and a VAT rate of 17 percent.<sup>222</sup> However, contrary to the statements in the declaration, the sample poplar log invoice appears to contain [ ], and the birch log invoice contains a VAT rate of [ ] 17 percent.<sup>223</sup> Thus, given the [ ] on Chengen’s poplar invoice, it is unclear why Chengen points to the interim VAT regulations to justify its position and, given the apparent similarities in the two documents.

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<sup>218</sup> *Id.*

<sup>219</sup> See Chengen’s March 29, 2017, Supplemental Section C Questionnaire Response at 17 and Exhibit SQ4-18 (“Notice of Ministry of Finance and the State Administration of Taxation on VAT and Consumption Tax Policies for Exported Goods and Labor Services” (2012)).

<sup>220</sup> See, e.g., Chengen’s Draft Comments at Exhibit 1 and Attachment 3.

<sup>221</sup> See Chengen’s Draft Comments at Exhibit 1 and Attachment 3. Despite the declaration’s statement that the attached invoice was for a birch log, the invoice appears to instead relate to [ ]. In order to be consistent with the public declaration, we refer to this invoice as the birch log invoice.

<sup>222</sup> See Chengen’s Draft Comments at Exhibit 1.

<sup>223</sup> *Id.* at Exhibit 1 and Attachment 3.

Chengen claims that Commerce erred in arguing that there is no third-party validation of Chengen's invoices because the seller's acceptance of the warehouse-in tickets generated by Chengen constitutes confirmation of the quantity recorded therein.<sup>224</sup> However, the record does not contain information related to how Chengen's purchases are negotiated or transacted with its suppliers, and verifiers were not presented with any documentation from those suppliers. Verifiers did not observe a delivery of logs and there is no record evidence that speaks to whether the seller was concerned with the quantity identified on Chengen's warehouse-in tickets or whether it was only concerned with the total value of the transaction. Furthermore, the fact that the tax invoices were audited by a tax accountant and certified by the government does not mean that those entities were privy to how the volumes underlying the invoices were generated and if they were indeed accurate. In addition, because Chengen's financial statements summarize the financial position of the company and have no component for quantity,<sup>225</sup> it is unclear how Chengen's auditors and the tax authority would validate the quantities reported to Commerce or against what information they would compare those quantities. Indeed, Chengen itself stated that "the starting materials definitely would not and cannot be shown in the {cost of goods sold} in the financial statements."<sup>226</sup> Accordingly, the authorities identified by Chengen cannot serve as third-party confirmation of Chengen's volumes.

Although Chengen claims that its log FOPs would be much more accurate than its veneer FOPs because the veneer volume is calculated based on theoretical dimensions,<sup>227</sup> this argument ignores the fact that Chengen's failure to reveal its conversion formula prior to verification precludes our ability to rely on those FOPs, and we are unable to reach the conclusion that the

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<sup>224</sup> *Id.* at 14.

<sup>225</sup> *See, e.g.*, Chengen's SCQR at Exhibit C-6.

<sup>226</sup> *See* Chengen's Letter, "Pre-Preliminary Comments," dated May 17, 2017, at 11.

<sup>227</sup> *See* Chengen's Draft Remand Comments at 16.

veneer FOPs would be less accurate. However, we note that Chengen’s veneers are produced on equipment that is calibrated to specific and precise sizes and Chengen reported that it has the “production capacity to respond to requests for specific veneer thicknesses.”<sup>228</sup> Moreover, Chengen’s own bills of material identify the tolerance of the thickness of the finished products as only [ ] for a [ ] product with [ ] core veneer plies (or layers) and a face and back veneer.<sup>229</sup> That tolerance allows for a variation of only [ ] mm per ply, which is a very precise distinction. In contrast to the opacity of the log volume conversion formula, verifiers were able to confirm the cubic meter calculations of production workers that received veneers at the production facility and confirmed that this amount matched the amount recorded on the warehouse-in slips and the inventory journal.<sup>230</sup> Although Chengen now claims that its veneer volumes are imprecise, Chengen’s log consumption methodology also relies on its reported veneer volumes because its log FOPs are based on the [ ].<sup>231</sup> Chengen appears to argue that any issues with the theoretical volumes of veneers would somehow be neutralized if we were to value its log FOPs.<sup>232</sup> However, the two FOPs are inextricably linked in Chengen’s calculations, such that an increase in its veneer quantities would result in a direct reduction in its reported log FOPs. To the extent that Chengen is now impugning the reliability of its veneer FOPs, this may call into question the use of Chengen’s log and veneer FOPs, which would render the record absent of any primary input data by which to calculate normal value.

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<sup>228</sup> See Chengen’s SuppACD at 25.

<sup>229</sup> *Id.* at Exhibit SQ6-22.

<sup>230</sup> See Chengen Verification Report at 14.

<sup>231</sup> See, e.g., Chengen’s SDQR at Exhibit D-2.1.

<sup>232</sup> See Chengen’s Draft Comments at 16, fn 5-6.

While Chengen claims that verifiers were incorrect in stating that the production manager calculates the log quantity purchased using a conversion table, and that instead the warehouse manager only confirms the cubic meters of logs delivered by the suppliers,<sup>233</sup> our verification report clearly stated that the production manager “will spot check the diameter of logs reported by the suppliers upon delivery” and “derives the cubic meters for the quantity batch on log length and log diameter.”<sup>234</sup> Chengen did not contest that characterization in its case brief or in any other submissions before the CIT. Accordingly, Chengen’s contention in its draft remand comments that Chengen’s warehouse manager uses the conversion table and formula to simply confirm the quantities calculated by the suppliers appears to be a new argument, and Chengen has not identified any record evidence to support this assertion.

Although Chengen argues that it does not retain delivery notes because they are informal and Commerce rarely asks for such documents,<sup>235</sup> the record still lacks those delivery sheets as third-party confirmation of Chengen’s log quantities and as a record of the method by which its logs are delivered. Although Chengen faults verifiers for not asking to see delivery notices or witness a log delivery, it was Chengen’s responsibility to develop the record prior to verification.<sup>236</sup>

Taraca Pacific argues that Commerce cited to no legal authority that would require respondents to provide third-party documentation and that we accepted Chengen’s labor FOPs despite the absence of such documentation.<sup>237</sup> While we do not require third-party documentation for certain reported production inputs when we determine that the documentation

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<sup>233</sup> *Id.* at 17-18.

<sup>234</sup> *See* Chengen Verification Report at 11.

<sup>235</sup> *See* Chengen’s Draft Comments at 18.

<sup>236</sup> *See Nan Ya Plastics*, 810 F. 3d at 1337.

<sup>237</sup> *See* Taraca Pacific’s Draft Comments at 7 and 8-9.

underlying the reported information is reliable, in this case, Chengen stated in its initial Section D questionnaire response that it reported “actual direct labor hours derived from the staff attendance sheets.”<sup>238</sup> At verification we were able to confirm the reported labor hours against those attendance sheets.<sup>239</sup> In contrast, while Chengen’s questionnaire responses led us to believe that it had supplier invoices,<sup>240</sup> we discovered at verification that no such supplier invoices existed.<sup>241</sup> Allowing parties to state that they based FOPs on supplier invoices and then reveal at verification that there were none presents the risk of manipulation of our proceedings. Furthermore, the need for third-party confirmation of Chengen’s log consumption is appropriate in this case because the accuracy of the methodology by which Chengen calculates its log volume is a question at issue in this proceeding.

As with Chengen’s arguments of similar nature, Taraca Pacific’s claim that Chengen’s VAT invoices must be accurate because they are an integral part of its financial accounting (and we found no discrepancies in those accounts),<sup>242</sup> ignores the fact that the primary purpose of financial accounting systems is to track monetary values, whereas our FOPs are dependent upon quantities.<sup>243</sup> Finally, as noted by Taraca Pacific, Chengen did provide third-party invoices for its birch and eucalyptus FOPs.<sup>244</sup> However, as explained in the *Final Determination*, Chengen’s most significant input is poplar veneers,<sup>245</sup> and Taraca Pacific’s argument regarding birch and eucalyptus invoices does not serve to justify why we should accept Chengen’s poplar log FOPs as reliably supported.

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<sup>238</sup> See Chengen’s SDQR at 11.

<sup>239</sup> See Chengen Verification Report at 22-23 and Exhibit 37.

<sup>240</sup> See, e.g., Chengen’s SDQR at 4-5.

<sup>241</sup> See Chengen Verification Report at 13.

<sup>242</sup> See Taraca Pacific Draft Comments at 7-8.

<sup>243</sup> See, e.g., Chengen’s SAQR at Exhibit A-3 (Audited Financial Statement).

<sup>244</sup> See Taraca Pacific Draft Comments at 9.

<sup>245</sup> See *Final Determination* IDM at 25.

### **Issue 3: Whether Chengen’s Formula is a Reliable Industry Standard**

#### *Chengen’s Comments:*

- The verifiers absolutely knew the “industry standard,” as named in the verification report, was in fact the Chinese National Standard, and the analyst’s declaration does not claim otherwise.<sup>246</sup>
- Documents provided at a verifier’s request that are translated at verification and not prepared in advance typically contain minimal translations, but company officials explain the content and Commerce’s own interpreter often makes additional translations. Even when providing translations in questionnaire responses, it is common to translate repeating headings or titles on the first page but not subsequent pages.<sup>247</sup>
- Although Commerce criticizes Chengen for not fully translating the conversion table and formula taken at verification, those two pages were provided at verification at the analysts’ request and therefore translated at verification rather than in advance. Chengen clearly translated the conversion formula on the first of the two accepted pages and the untranslated portions were translated on the cover page not accepted at verification. Translating the title of the standard on the cover sheet but not the second page that was taken by verifiers was an adequate translation procedure under Commerce practice.<sup>248</sup>

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<sup>246</sup> See Chengen’s Draft Comments at 19.

<sup>247</sup> *Id.* at 19-20.

<sup>248</sup> *Id.*

- The standard taken by verifiers indicated “GB4814-84” in the corner. As Commerce is well aware from experience in numerous China cases, “GB” stands for national standard in China.<sup>249</sup>
- Although the draft remand claims that Chengen should have presented this log volume formula earlier in the proceeding so Commerce could evaluate it, Commerce never requested information on how Chengen confirmed the volume of its log deliveries.<sup>250</sup>
- Furthermore, logs sold on a volume basis are not measured on a volume basis. For any material sold on a volume basis, a calculation or conversion must be used because scientific volume displacement analysis is too difficult. For irregular objects, this calculation would be reasonably accurate for a functioning industry; the wood industry typically uses volume measurements and has developed various standards for calculating volume of logs or other wood forms, one of which was used by Chengen – the Chinese National Standard.<sup>251</sup>
- The assumption that the standard is inaccurate because it uses the small end of the log is unreasonable; as Commerce conducts numerous wood and log investigations, it cannot pretend it does not know that this is common industry practice.<sup>252</sup>
- There were no documents that in any way suggest that the logs would not be appropriately measured by the smaller end of the log and the petitioner was unable to point to another method of measurement. Thus, the log measurements should be recognized as accurate in the absence of contradictory evidence.<sup>253</sup>

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<sup>249</sup> *Id.* at 20.

<sup>250</sup> *Id.* at 20-21.

<sup>251</sup> *Id.* at 21.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

- This method is used in Europe and is the most common method in the United States. Commerce cannot conclude that a pervasive national and international standard is imprecise.<sup>254</sup>
- Commerce’s claim that it must test the volume formula and compare other methodologies is unreasonable and disingenuous; the fact that Chengen used a national standard must carry significant weight. Even if Commerce did not know this was the national standard it knew it was an industry standard.<sup>255</sup>
- Commerce relies upon standard calculations for various inputs and does not doubt their veracity.<sup>256</sup>
- If Commerce had an interest to know the log measurement methodology it should have issued a supplemental questionnaire or at least allowed Chengen to explain it at verification.<sup>257</sup>
- The only explanation for the verifiers’ lack of further inquiry into the standard is that they were satisfied with the accuracy of Chengen’s log reporting.<sup>258</sup>

*Commerce’s Position:*

We disagree with Chengen that it was unreasonable for Commerce to determine that it was unable to conclude that the conversion table and formula were the Chinese National Standard or that they resulted in an accurate calculation of log volumes in our *Final Determination*.<sup>259</sup> Moreover, Chengen’s claim that verifiers understood the conversion table and formula to be the Chinese National Standard or that they were aware that removing the cover

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<sup>254</sup> *Id.* at 22.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.* at 22-24.

<sup>257</sup> *Id.* at 23.

<sup>258</sup> *Id.* at 25.

<sup>259</sup> *See Final Determination* IDM at 25.

sheet of the package resulted in removing the translated title are speculative assertions, not supported by the record of this investigation. Similarly, Chengen's assertion that Commerce knows "GB" to be a Chinese national standard makes assertions regarding Commerce's knowledge and interpretation of evidence that is not supported by the record.

Chengen claims that it is standard practice to only translate the first instance of a word or phrase and rely on that translation for future occurrences, and it is only because verifiers removed the cover sheet that the translation is not on the record.<sup>260</sup> While it may be common to only translate certain portions of documents, had Chengen introduced this standard on the record prior to verification, it would have been a simple matter to identify the Chinese characters in the verification exhibit by comparison to record information. However, Chengen continues to fault Commerce for not accepting information that should have been properly submitted months earlier, while the record was open for new information, and that would have remedied the deficiencies identified in the *Final Determination*. Whether the formula relied upon by Chengen to calculate its log FOPs was, in fact, the Chinese National Standard is immaterial to the fact that we did not know at all that the FOPs reported by Chengen were calculated by Chengen using a formula or that the FOPs were unsupported by information provided by third parties.

Chengen faults Commerce for not issuing supplemental questionnaires regarding its log measurement methodology.<sup>261</sup> However, because Chengen stated that it reported FOPs based on material purchase invoices,<sup>262</sup> we had no reason to suspect that it did not have purchase documentation from its suppliers until we were informed at verification that the poplar farmers do not provide invoices and that Chengen does not retain the delivery notices.

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<sup>260</sup> See Chengen's Draft Comments at 19-20.

<sup>261</sup> *Id.* at 22-23.

<sup>262</sup> See Chengen's SDQR at 5.

Chengen appeals to Commerce's experience conducting wood and log investigations to assert that we should know that measuring a log at the narrow end is standard procedure.<sup>263</sup> Although we have concerns with the fact that the standard relies upon the smaller end of the log to calculate log volume, we are also concerned about our process for vetting sources and providing opportunity for comment and consideration. Whether the formula accurately calculates the volume of a log and can do so based on the narrow end of the log was never the subject of debate or subjected to scrutiny by all interested parties because we did not learn of its existence until after the point at which new factual information could be submitted.

Chengen claims that Commerce relies upon various standards in our proceedings and does not doubt their veracity.<sup>264</sup> However, these remand results discuss at length the reasons why the conversion table and formula should have been subjected to comment and debate and why we require ample time to consider new information in our proceedings. The question at issue is not whether we rely on standards in any of our proceedings; it is whether we have the opportunity to analyze and discuss those standards. Indeed, Chengen itself concedes that the wood industry has developed various standards for calculating the volume of logs.<sup>265</sup> While there may in fact be various standards for calculating log volume, the record does not contain any information about any competing standards or the relative merits or demerits of any of those standards. Given these considerations, verification was not the appropriate time in this investigation to begin to analyze just one of those standards. Permitting a complete description of one standard on the record without allowing other interested parties the opportunity to provide

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<sup>263</sup> See Chengen's Draft Comments at 21.

<sup>264</sup> *Id.* at 22-23.

<sup>265</sup> *Id.* at 21.

information to rebut, clarify, or correct that standard would have been inappropriate and impractical at such a late stage in the investigation.

For the reasons described above, we continue to conclude that the methodology employed in the *Final Determination*, in which Commerce calculated Chengen's NV by applying the intermediate input methodology, rather than by valuing Chengen's log FOPs, was appropriate in light of Chengen's failure to identify the method by which its reported log volumes were calculated until it was too late for interested parties to comment, and as a result of the absence of any third-party documentation supporting those log volumes.

## **V. FINAL RESULTS OF REDETERMINATION**

Pursuant to the CIT's *Remand Order*, Commerce has provided further information about the perceived inconsistencies in the record, and responded to comments by interested parties, but continues to find that Chengen has failed to substantiate its log volume consumption and reporting. Therefore, on remand, we continue to apply the intermediate input methodology and valuation of veneers as set forth in the *Final Determination*. We consequently make no changes to Chengen's margin or the rate for the separate rate companies.

**X**

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**Attachment**

Analyst Declaration



2. Verifiers were taken on a tour of Dongfangjuxin's poplar core veneer production facility on, or around, September 13, 2017.
3. Company officials stated that suppliers deliver the logs in batches and mark the diameter of the smaller end of each log in each batch, taking the measurements from inside the bark, but verifiers did not observe delivery of any logs. However, verifiers did spot check the diameters already marked on the logs.
4. Company officials stated that shipments of logs are accompanied by a delivery sheet but that the supplier does not provide a copy of the delivery sheet or any other documentation to Dongfangjuxin. Verifiers did not view any sample delivery sheets or copies of delivery sheets.
5. Verifiers were told by company officials that the production manager records the quantity of the logs purchased in cubic meters using a conversion table to derive the volume of the logs in cubic meters based on the length of the log and the diameter of the smaller end of the log.
6. Verifiers observed that a copy of the conversion table to which company officials referred was on a desk in the veneer storage area, consisting of two pages containing a formula, some Chinese language text, and the conversion table.
7. Because the conversion table was relevant to the manner in which Chengen calculated the log volumes reported to Commerce in its questionnaire response, verifiers considered this to be information that supported the reported log volumes. Accordingly, we requested copies of the conversion table for inclusion in a verification exhibit.
8. At the verification conference room, company officials presented verifiers with the two pages observed on the plant tour, as requested, as well as a cover sheet and a significant number of additional pages of documentation. Verifiers did not review this additional documentation and did not request an explanation of the additional documentation contained therein.

9. Verifiers understood the additional documentation to be new factual information that was previously absent from the record, and information that should have been presented for consideration by Commerce and interested parties prior to the verification. Accordingly, we declined to accept the new factual information for inclusion as a verification exhibit.

11. I affirm, under penalties of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

[ \_\_\_\_\_ ] Date: July 19, 2019  
[ \_\_\_\_\_ ]  
Senior International Trade Compliance Analyst  
Office of Antidumping and Countervailing Duty Operations  
Enforcement and Compliance  
International Trade Administration  
U.S. Department of Commerce  
Washington, D.C. 20230