

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

Consol. Court No. 18-00002, Slip Op. 20-22 (CIT February 20, 2020)

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. 20-22 (CIT February 20, 2020) (*Remand Order II*). These final results of redetermination concern Commerce’s *Final Determination* in the less-than-fair-value (LTFV) investigation of certain hardwood plywood products (plywood) from the People’s Republic of China (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,¹ rather than by valuing Chengen’s log FOPs.² In *Linyi Chengen Imp. &*

¹ Commerce’s general practice, consistent with section 773(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), is to calculate NV using the factors of production (FOPs) that a respondent consumes in order to produce a unit of the subject merchandise. There are circumstances, however, in which Commerce will modify its standard FOP methodology, choosing instead to apply a surrogate value (SV) to an intermediate input instead of the individual FOPs used to produce that intermediate input. 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) at Comment 2.

² See *Final Determination* and accompanying 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) (*Order*).

Exp. Co. v. United States, 391 F. Supp. 3d 1283 (CIT 2019) (*Remand Order I*), the CIT highlighted its concern with two 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 from 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.³ On remand, Commerce maintained in its *Redetermination I* that Chengen had failed to build an adequate administrative record prior to the verification conducted in the LTFV investigation and that Chengen was unable to report and substantiate its log volume FOPs accurately; as a result, Commerce continued to apply the intermediate input methodology, as in the underlying *Final Determination*.⁴

In its *Remand Order II*, the CIT instructed Commerce to “accept the previously-rejected documents that Chengen presented at verification representing the complete and accurate Chinese National Standard used for volume conversion.”⁵ As set forth in detail below, pursuant to the CIT’s *Remand Order II*, under respectful protest,⁶ Commerce requested that Chengen provide the additional pages accompanying its log volume calculation table and formula that Chengen attempted to provide to Commerce verifiers at the time of Chengen’s verification. Commerce also provided an opportunity for interested parties to comment on the new factual information.⁷

³ See *Remand Order I*, 391 F. Supp. 3d at 1294; and *Final Results of Redetermination Pursuant to Court Remand Order in Linyi Chengen Import and Export Co., Ltd., et al. v. United States*, Court No. 18-00002, Slip Op. 19-67 (*Redetermination I*).

⁴ See *Redetermination I*.

⁵ See *Remand Order II*, Slip Op. 20-22 at 14.

⁶ See *Viraj Group, Ltd. v. United States*, 343 F. 3d 1371, 1376 (Fed. Cir. 2003) (*Viraj*).

⁷ See Memorandum, “Requesting 12-page Document Rejected at Verification Pursuant to Court Order and Comments on Such Information,” dated March 4, 2020 (NFI Request and Comment Memo).

On April 23, 2020, Commerce uploaded to Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) the Draft Results of Redetermination and established April 28, 2020, as the deadline for interested parties to provide comments on the Draft Results of Redetermination.⁸ On April 27, 2020, Commerce extended the deadline for interested parties to comment on the Draft Results of Redetermination to 12:00 p.m. on May 4, 2020.⁹ On May 4, 2020, the Coalition for Fair Trade in Hardwood Plywood (the petitioner); Chengen; Taraca Pacific, Inc. (Taraca Pacific); Zhejiang Dehua TB Import & Export Co., Ltd. (Dehua TB); and a coalition of separate rate applicants (SRA Plaintiffs) submitted comments on the Draft Results of Redetermination.¹⁰

In consideration of the new factual information, and the CIT’s views in the *Remand Order I* and *Remand Order II*, on remand, Commerce has, also under respectful protest, reconsidered the application of the intermediate input methodology to Chengen and calculated an estimated weighted-average dumping margin based on the valuation of Chengen’s log FOPs. Consequently, we calculated an estimated weighted-average dumping margin for Chengen of 0.00 percent.¹¹ Further, as explained below, we are revising the dumping margin for the China-

⁸ See Memorandum, “*Linyi Chengen Import and Export Co., Ltd., et al. v. United States*, Consol. Court No. 18-00002, Slip Op. 20-22 (CIT February 20, 2020): Draft Results of Redetermination Pursuant to Court Remand,” dated July 19, 2019 (Draft Results of Redetermination).

⁹ See Memorandum, “Extension of Comments Deadline,” dated April 27, 2020.

¹⁰ See Petitioner’s Comments, “Comments on Draft Results of Redetermination,” dated May 4, 2020 (Petitioner’s Draft Comments); Chengen’s Comments, “Comment on Second Remand Results,” dated May 4, 2020 (Chengen’s Draft Comments); Taraca Pacific et al.’s Comments, “Comment of Taraca Pacific, Inc. et al. on Draft Results of Redetermination Pursuant to Court Order (Ct. No. 18-00002),” dated May 4, 2020 (Taraca Pacific’s Draft Comments); Dehua TB et al.’s Comments, “Comments on Draft Results of Redetermination Pursuant to Court Order in *Linyi Chengen Import and Export Co., Ltd., et al. v. United States*, Consol. Court No. 18-00002, Slip Op. 20-22 (CIT February 20, 2020),” dated May 4, 2020 (Dehua TB’s Draft Comments); and SRA Plaintiffs Comments, “Comments on Second Remand Results,” dated May 4, 2020 (SRA Plaintiffs Comments).

¹¹ See Memorandum, “Antidumping Duty Investigation of Certain Hardwood Plywood Products from the People’s Republic of China: Draft Redetermination Analysis Memorandum for *Linyi Chengen Import and Export Co., Ltd.*,” dated April 22, 2020 (Chengen Analysis Memo).

wide entity to the highest dumping margin alleged in the petition, 114.72 percent,¹² thereby revising the rate applied to Shandong Dongfang Bayley Wood Co., Ltd. (Bayley). We are continuing to calculate an estimated dumping margin for non-examined companies receiving a separate rate by averaging Chengen's 0.00 percent rate with the rate assigned to the China-wide entity, and have assigned to the non-examined, separate rate companies involved in this litigation (either directly or identified via their importers that are party to this litigation) a rate of 57.36 percent.¹³

II. DISCUSSION

A. Background

On December 8, 2016, Commerce initiated an LTFV investigation on plywood from China,¹⁴ and on January 9, 2017, we selected Chengen as a mandatory respondent in this segment of the proceeding.¹⁵ Chengen's subsequent questionnaire responses showed that Chengen is an integrated producer of plywood, meaning that its production process begins with peeling logs into thin veneers instead of purchasing the veneer inputs from suppliers.¹⁶ Based on Chengen's record submissions, Commerce relied upon Chengen's reported log FOPs in the *Preliminary Determination* when determining its estimated weighted-average dumping margin.¹⁷

¹² See *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 28629 (June 23, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 31-32.

¹³ The separate rate is the simple average of the rates determined for Chengen and the China-wide entity. The methodology for calculating this rate is discussed in the *Preliminary Determination* PDM at 21.

¹⁴ 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).

¹⁵ See Memorandum, "Antidumping Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Respondent Selection," dated January 9, 2017.

¹⁶ See, e.g., Chengen's March 1, 2017 Section D Questionnaire Response (Chengen's March 1, 2017 DQR) at Exhibit D-3.

¹⁷ See *Preliminary Determination* PDM at 16-17, 38-39.

In making this determination, Commerce declined to apply the intermediate input methodology, as requested by the petitioner.¹⁸

Commerce conducted verification of Chengen's reported information from September 11 through 18, 2017.¹⁹ At verification, Commerce learned for the first time that Chengen's suppliers of poplar logs, Chengen's most significant input, do not provide an invoice to Chengen upon delivery of the purchased logs. Instead, Chengen's production manager calculates the volume of each purchased log in cubic meters using a conversion table and formula, and then records those calculated log volumes on warehouse-in tickets.²⁰ Commerce also learned at verification that the log volumes Chengen reported in its questionnaire responses were derived using the aforementioned conversion table and formula.²¹ Commerce requested a copy of the pages of the conversion table and formula observed on a tour of Chengen's production facilities and included those two pages in an exhibit of the verification report.²² As explained in *Redetermination I*, Commerce declined to collect additional pages that were offered by Chengen but not observed on the plant tour.²³ Commerce rejected these pages on the basis that such documentation constituted new factual information that was previously absent from the record and that should have been presented for consideration by Commerce and interested parties prior to the verification.²⁴

¹⁸ The petitioner is the Coalition for Fair Trade in Hardwood Plywood.

¹⁹ 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.

²⁰ *Id.* at 11-13.

²¹ *Id.*

²² *Id.* at 11 and Exhibit 26.

²³ See *Redetermination I* at 13-14.

²⁴ *Id.* at 15-24.

Commerce issued its *Final Determination* on November 16, 2017.²⁵ 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.²⁶ In the *Final Determination*, Commerce explained why the conversion table and formula that Chengen used called into question the accuracy of Chengen’s reported log volumes, and why the lack of invoices from its suppliers was of additional concern.²⁷

In the *Remand Order I*, the CIT asserted that, while the *Final Determination* critiqued aspects of Chengen’s calculations of log volumes, it failed to explain how the record, particularly the verification report and related exhibits, supported the conclusion that Chengen’s log volume calculations were unreliable.²⁸ The CIT expressed concern that Commerce verifiers allegedly detached a cover page from the conversion table and formula that identified the document as the Chinese National Standard.²⁹ The CIT also stated that there is 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 volumes and, thereby, consumption of logs to produce subject merchandise.³⁰ 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 it remanded the *Final Determination* for further explanation.³¹

²⁵ See *Final Determination*.

²⁶ See *Final Determination* IDM at 23.

²⁷ *Id.* at 25.

²⁸ See *Remand Order I*, 391 F. Supp. 3d at 1294.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

In response to the *Remand Order I*, Commerce reconsidered the record evidence and provided further explanation as to why: (1) Chengen’s record documentation was insufficient to substantiate Chengen’s log volumes and consumption of logs during the period of investigation (POI); and (2) Commerce accepted the conversion table and formula, but declined to accept the additional pages containing new factual information that Chengen presented at verification.³² We continued to maintain that the conversion table and formula used by Chengen to calculate and report the volume of its log consumption were not supported by, or grounded in, record evidence that would allow us to determine that they result in an accurate measure of Chengen’s log consumption during the POI, and that the record lacks third-party confirmation of the volume of Chengen’s POI log consumption.³³ Accordingly, we continued to apply the intermediate input methodology to value Chengen’s consumption of veneers and did not revise the dumping margins calculated in the *Final Determination*.³⁴

In its *Remand Order II*, the CIT concluded that it was “unreasonable for Commerce to refuse to consider the entirety of the document purporting to be the Chinese National Standard when the document is readily available and highly relevant.”³⁵ The CIT instructed Commerce to “accept the additional pages representing the entire 12-page document, including the cover page and other pages that were previously rejected at verification” and to reconsider its *Final Determination* in light of this information.³⁶ In addition, the CIT concluded that Commerce’s requirement that Chengen support its reported volumes of log consumption by an independent third-party source was contrary to law.³⁷ Finally, the CIT directed Commerce to “make

³² See *Redetermination I* at 32-33.

³³ *Id.*

³⁴ *Id.* at 60.

³⁵ See *Remand Order II*, Slip Op. 20-22 at 12.

³⁶ *Id.*

³⁷ *Id.* at 12-14.

appropriate adjustments to the separate rate parties before the court in this action” if Commerce makes changes to Chengen’s dumping margin on remand.³⁸

On March 4, 2020, Commerce requested that Chengen provide the additional pages accompanying its log volume calculations that it attempted to provide at verification, and we allowed interested parties to provide comments on the documentation.³⁹ On March 6, 2020, Chengen provided the requested documentation,⁴⁰ and on March 11, 2020, the petitioner and Chengen provided comments on the supplemental new factual information.⁴¹

Pursuant to the CIT’s *Remand Order II*, in the Draft Results of Redetermination we reconsidered the record evidence and revised our margin calculation so as to calculate NV using Chengen’s log FOPs, rather than the intermediate input methodology based on FOPs of wood veneers.⁴² We adopted the methodology employed in the *Preliminary Determination* with regard to the calculation of Chengen’s dumping margin, and the only changes we made were to use an updated U.S. sales database and revise the export subsidy adjustment applied to determine the cash deposit rate.⁴³ We also calculated a margin for the non-examined, separate rate companies involved in this litigation by averaging Chengen’s 0.00 percent rate with the rate assigned to the China-wide entity in the *Final Determination* (183.36 percent) and assigned to them a rate of 91.68 percent. However, as discussed below, for these final results of redetermination, we are revising the rate assigned to the China-wide entity to 114.72 percent, the highest dumping margin alleged in the petition. Consequently, we are also revising the rate applied to the non-

³⁸ *Id.* at 14.

³⁹ See NFI Request and Comment Memo.

⁴⁰ See Chengen’s Letter, “Supplemental Factual Submission,” dated March 6, 2020, at Exhibit 1 (Chinese National Standard).

⁴¹ See Petitioner’s Letter, “Comments on Supplemental Factual Information submitted in Slip Op. 20-22,” dated March 11, 2020 (Petitioner FI Comments); and Chengen’s Letter, “Comments on Supplement to Verification Exhibit 26,” dated March 11, 2020 (Chengen FI Comments).

⁴² See Chengen Analysis Memo.

⁴³ *Id.*

examined, separate rate companies that are party to this litigation, and to the known exporter/producer combinations as identified in the injunctions associated with the importers that are party to the litigation; to calculate this rate, we have averaged Chengen's 0.00 percent rate with the 114.72 percent rate assigned to the China-wide entity, resulting in a rate of 57.36 percent.

B. Analysis

1. Chengen

Pursuant to the CIT's *Remand Order II*, the record now contains the complete Chinese National Standard which Chengen asserts that it used to calculate the log volumes reported in this investigation.⁴⁴ The additional information supplemented on the record consists of a cover sheet with the translation "PRC National Standard" that also identifies an effective date of December 1, 1984, and includes a note that it was published by the China State Bureau of Technical Supervision.⁴⁵ The record also contains eight more pages of the log volume table adding the volumes of logs with diameters from four to 120 centimeters, and lengths from three meters to ten meters.⁴⁶ In addition, Appendix A contains the following (translated) notes:

Volume calculation rule for round log (Supplemental)

- A.1 For round logs that has (*sic*) special use and longer than above listed table, the volume shall be calculated as follows:
- A.2 Length and diameter shall be measured according to GB 144.2-84 "Log Inspection."
 - A.2.1 Size class increase and tolerance
 - A.2.1.1 Diameter class increase by 2 cm.
 - A.2.1.2 Length class increase and tolerance shall be negotiated by the two parties.
- A.3 Defect criteria shall be negotiated by the two parties
- A.4 Mine timber volume shall follow the following table:

{brief additional table}

⁴⁴ See Chinese National Standard.

⁴⁵ *Id.*

⁴⁶ *Id.*

Supplemental Information:

This standard is proposed by the Minister of Forestry.

This standard is drafted by the Standard Timber Measurement Group.⁴⁷

It is not clear how this new information significantly alters the record of this investigation. However, the CIT held, prior to Chengen's March 6, 2020 submission of the complete document, that the Chinese National Standard is "complete and accurate."⁴⁸ In addition, the CIT held that Commerce has no reason to doubt the accuracy or reliability of the value added tax (VAT) invoices provided by Chengen based on this administrative record.⁴⁹ Therefore, as directed by the CIT, we have reconsidered the record evidence.

For these final results of redetermination, we are accepting Chengen's reported log volume as an accurate representation of the volume of logs purchased and consumed by Chengen during the POI, given Chengen's assertions that this volume was calculated in accordance with the Chinese National Standard and its purchases of logs were supported by VAT invoices deemed to be accurate. Consequently, because we are accepting Chengen's log volume consumption, we have reconsidered the application of the intermediate input methodology and do not find that the record meets the limited exceptions for applying that methodology. As stated in the *Preliminary Determination*:

{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. Based on Chengen's questionnaire responses and supporting documentation, as well as the responses to the {Commerce}'s supplemental questionnaires regarding this issue, Chengen demonstrated 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 provided documentation which supported the reported figures. Because Chengen's log consumption figures are in its normal books and records, these data can be verified. Moreover, Chengen indicated that it reported all

⁴⁷ *Id.*

⁴⁸ *See Remand Order II* at 14

⁴⁹ *Id.*

inputs consumed in the production of veneers.⁵⁰

The data relied upon in the *Preliminary Determination* were verified and, outside of the deficiencies noted in the verification report and in the *Final Determination*, which have been duly considered by the CIT and which we have reconsidered in these final results of redetermination, we noted no significant discrepancies in Chengen's reported data.⁵¹

Accordingly, for these final results of redetermination we have adopted the same methodology that was employed in the *Preliminary Determination* to calculate Chengen's estimated weighted-average dumping margin.⁵² However, we substituted the U.S. sales data relied upon in the *Preliminary Determination* with the U.S. sales data submitted after verification that incorporated the minor corrections presented to, and accepted by, Commerce at verification.⁵³ Accordingly, for these final results of redetermination, we have calculated a revised estimated weighted-average dumping margin for Chengen of 0.00 percent.⁵⁴

The petitioner points out that there are numerous blatant errors in the Chinese National Standard document submitted by Chengen that affect the log volumes for certain lengths of logs, specifically identifying those logs with lengths of between 5.0 or 7.8 meters as particularly problematic.⁵⁵ However, as noted in the verification report, “{c}ompany officials explained that all logs are purchased at 2.6 meters long.”⁵⁶ Thus, the accuracy of the log volume calculation table with respect to logs measuring in excess of 5.0 meters does not necessarily apply to logs consumed by Chengen during the POI. The Chinese National Standard identifies log volumes

⁵⁰ See *Preliminary Determination* PDM at 16 (citations omitted).

⁵¹ See Chengen Verification Report.

⁵² See *Preliminary Determination* PDM.

⁵³ See Chengen's Letter, “Revised U.S. Sales Database,” dated September 29, 2017; see also Chengen Verification Report at 2-3.

⁵⁴ See Chengen Analysis Memo.

⁵⁵ See Petitioner FI Comments at 3.

⁵⁶ See Chengen Verification Report at 11.

specifically for logs of 2.6 meters measuring between 4 and 120 centimeters in diameter.⁵⁷

Although the Chinese National Standard illogically identifies the volume of a log 2.6 meters in length and 8 centimeters in diameter as larger than the volume of a log of the same length but 9 centimeters in diameter, the Chengen Verification Report states that the verifiers “observed that the logs in the log inventory were generally of the same length and of varying diameters between approximately 20 and 40 centimeters.”⁵⁸ A review of the log volumes reported in the Chinese National Standard for the dimensions of the logs used by Chengen during the POI does not reveal any obvious anomalies such as the ones identified by the petitioner.

Similarly, the petitioner points out that some of the length categories in the Chinese National Standard are separated by as much as 20 centimeters and the standard notes that “length class increase and tolerance shall be negotiated by the two parties.”⁵⁹ However, because all of the logs purchased by Chengen during the POI were reportedly of the same length, and those logs are of a length expressly identified in the Chinese National Standard, we find that this apparent problem with the standard is not relevant to the POI log volumes calculated by Chengen using the Chinese National Standard.

In its comments, Chengen noted that, in the preliminary results of the first administrative review of this order,⁶⁰ Commerce found the Chinese National Standard to be a reliable measurement for log volume, and it excerpted a description from the preliminary decision memorandum of the extensive administrative record that was developed over the course of that

⁵⁷ See Chinese National Standard.

⁵⁸ See Chengen Verification Report at 11.

⁵⁹ See Petitioner FI Comments at 3-4.

⁶⁰ See *Certain Hardwood Plywood Products from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 7270 (February 7, 2020) (*ARI Prelim Results*), and accompanying PDM.

review.⁶¹ However, that record is separate from the record of this investigation, and Commerce cannot impute the conclusions drawn from that record to the record of this investigation.⁶² In *Redetermination I*, Commerce faulted Chengen for failing to build an accurate record concerning the accuracy of the log volumes resulting from the application of the formula now identified as the Chinese National Standard.⁶³ We further stated:

“{T}hese 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. 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 information to rebut, clarify, or correct that standard would have been inappropriate and impractical at such a late stage in the investigation.”⁶⁴

By contrast, the description of the record developed in the first administrative review quoted by Chengen in its comments was the result of Commerce’s ability to subject factual information submitted on the record of that review to robust analysis and follow-up requests for information.⁶⁵ Accordingly, we find that the conclusions drawn in the first administrative review

⁶¹ See Chengen FI Comments at 2.

⁶² See *Diamond Sawblades Manufacturers’ Coalition v. United States*, 301 F. Supp. 3d 1326, 1353 (CIT 2018) (citing *Yama Ribbons and Bows Co., Ltd v. United States*, 865 F. Supp. 2d 1294, 1299 (CIT 2012) (“Commerce must base its decisions on the record before it in each investigation”)); see also *Cerro Flow Prods., LLC v. United States*, 2014 Ct. Intl. Trade LEXIS 83, *19-20 (July 18, 2014) (“Commerce’s longstanding practice, upheld by the court, is to treat each segment of an antidumping proceeding, including the antidumping investigation and the administrative reviews that may follow, as independent proceedings with separate records, which lead to independent determinations”) (citing *E.I. Du Pont de Nemours & Co. v. United States*, 22 C.I.T. 19, 32 (1998)).

⁶³ See *Redetermination I* at 14.

⁶⁴ *Id.* at 59-60 (citations omitted).

⁶⁵ See, e.g., *ARI Prelim Results PDM* at 19-20 (final results not yet issued).

have no bearing on these final results of redetermination. Rather, we are reconsidering our *Final Determination* at the direction of the CIT under respectful protest.⁶⁶

2. *Separate Rate Companies*

With respect to the separate rate companies that were not selected for individual examination, it is Commerce's normal practice to look to section 735(c)(5) of the Act, which pertains to determining the all-others rate in a market economy investigation, as guidance for calculating a rate for non-examined companies in a non-market economy (NME) proceeding who demonstrate their eligibility for a separate rate. Looking to section 735(c)(5)(A) of the Act as guidance, that provision provides that we are to rely on a rate equal to the weighted average of the rates calculated for the individually investigated respondents, excluding rates that are zero, *de minimis*, or based entirely on facts available (FA). When the estimated weighted-average dumping margins for all exporters or producers individually investigated are zero, *de minimis*, or determined entirely under section 776 of the Act, Commerce may use any reasonable method to establish the rate for exporters and producers not individually investigated, which includes averaging those estimated dumping margins for the exporters or producers individually investigated (*i.e.*, the rates that are zero, *de minimis* or based entirely on FA).⁶⁷ The SAA explains that “{t}he expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available.”⁶⁸ However, the SAA also explains that “if this method is not feasible, or if it

⁶⁶ See *Viraj*, 343 F. 3d at 1376.

⁶⁷ See section 735(c)(5)(B) of the Act.

⁶⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 873.

results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.”⁶⁹

In this investigation, there are no rates for individually-investigated respondents other than those that are zero. We have determined that applying the expected method and applying the 0.00 percent rate to the separate rate respondents participating in this litigation is not appropriate in this case because this rate would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers. Instead, we have determined to use another reasonable method for purposes of determining the estimated dumping margin assigned to the non-examined, separate rate companies that are party to this litigation: to take a simple average of the 0.00 percent rate calculated for Chengen and the highest petition rate, as explained below, of 114.72 percent assigned to the China-wide entity.⁷⁰ Chengen and the China-wide entity, which includes the second mandatory respondent Bayley, were the only entities other than the separate rate companies for which Commerce determined dumping margins, and, thus, the average of the two rates assigned to those entities is a reasonable method to establish the rate to apply to the separate rate companies that are party to this litigation.

In addition, to determine the cash deposit rate of those separate rate companies that are party to this litigation, we intend to adjust the assigned dumping margin for the export subsidy that was found in the final determination of the corresponding countervailing duty investigation and that was quantified as part of the *Final Determination* (11.81 percent).⁷¹ This adjusted dumping margin of 45.55 percent will apply as the cash deposit rate for the non-examined,

⁶⁹ *Id.*

⁷⁰ See Attachment detailing the exporter-producer combinations for which we are revising the rate for these final results of redetermination.

⁷¹ See *Final Determination*; see also Memorandum, “Export Subsidies Rate,” dated November 6, 2017.

separate rate companies that are party to this litigation, and to the known exporter/producer combinations as identified in the injunctions associated with the importers that are party to the litigation.⁷²

3. *Final Results of Redetermination*

Based on the foregoing, and pursuant to the CIT's *Remand Order II*, from the Draft Results of Redetermination, we have continued to calculate NV using Chengen's log FOPs rather than apply, as in the *Redetermination I*, the intermediate input methodology based on FOPs of wood veneers.⁷³ This calculation results in a 0.00 percent estimated weighted-average dumping margin for Chengen, and, consequently, if these final results of redetermination are affirmed by the Court, Chengen shall be excluded from the *Order*.⁷⁴

Furthermore, we are revising the dumping margin assigned to the China-wide entity, and consistent with our practice in investigations, are selecting 114.72 percent, the highest dumping margin alleged in the petition. Consequently, we are also revising the rate applied to the non-examined, separate rate companies that are party to this litigation, and to the known exporter/producer combinations as identified in the injunctions associated with the importers that are party to the litigation. To calculate this rate, we have averaged Chengen's 0.00 percent margin with the rate assigned to the China-wide entity, resulting in a rate of 57.36 percent. Lastly, we are revising the cash deposit rate for these same parties based on their revised estimated dumping margins, adjusted for the export subsidy based on the final determination for

⁷² Because one importer that is party to this litigation, Fabuwood Cabinetry Corporation (Fabuwood), did not request an injunction from the CIT, we requested that Fabuwood identify the exporter/producer combination(s) that supplied Fabuwood with merchandise under consideration during the POI. *See* Commerce's Letter, "Request for Supplier Information," dated April 17, 2020; *see also* Fabuwood's Letter, "Response to Request for Supplier Information," dated April 21, 2020.

⁷³ *See* Chengen Analysis Memo.

⁷⁴ This exclusion will only apply to the exporter-producer combination assigned to Chengen, as detailed in the rate box herein.

the companion countervailing duty investigations and quantified as part of the *Final*

Determination. The revised results are as follows:

| Exporter | Producer | Estimated Dumping Margin (Percent) | Cash Deposit Rate (Percent) |
|---|------------------------------------|------------------------------------|-----------------------------|
| Linyi Chengen Import and Export Co., Ltd. | Linyi Dongfangjuxin Wood Co., Ltd. | 0.00 | N/A |
| Separate Rate Litigants ⁷⁵ | | 57.36 | 45.55 |
| China-wide Entity ⁷⁶ | | 114.72 | 114.72 |

III. SUMMARY AND ANALYSIS OF COMMENTS FROM INTERESTED PARTIES

On April 23, 2020, Commerce uploaded to ACCESS the Draft Results of Redetermination and invited parties to comment.⁷⁷ On May 4, 2020, the petitioner, Chengen, Taraca Pacific, Dehua TB, and SRA Plaintiffs submitted comments.⁷⁸ No other interested parties submitted comments.

Issue 1a: Whether the Record Continues to Support the Intermediate Input Methodology

*Petitioner's Comments*⁷⁹

- Commerce's original determination to apply the intermediate input methodology identified a number of concerns about Chengen's consumption of its reported log volumes that are not resolved by the additional documentation submitted by Chengen.
- Even if the standard is "complete and accurate," it does not cure the deficiencies in the log volumes calculated using the standard, and whether the VAT invoices are "deemed accurate" does not render Chengen's log consumption volumes accurate or reliable.

⁷⁵ See Attachment for the exporter/producer combinations whose rates we are revising.

⁷⁶ The China-wide entity includes mandatory respondent Shandong Dongfang Bayley Wood Co., Ltd.

⁷⁷ See Draft Results of Redetermination.

⁷⁸ See Petitioner's Draft Comments, Chengen's Draft Comments, Taraca Pacific's Draft Comments, Dehua TB's Draft Comments, and SRA Plaintiff's Draft Comments.

⁷⁹ See Petitioner's Draft Comments at 8-14.

- Where a conversion formula that is unexplained and unanalyzed, and lacks critical clarifying information, it is reasonable to reject data based on this formula in favor of reliable information (*i.e.*, veneer consumption volumes).
- The China National Standard is 36 years old and there is no information indicating whether these standards are still in use or whether they have been revised.
- There are numerous blatant errors in the conversion table affecting the log volumes. In its draft remand, Commerce stated that these errors do not affect the logs consumed by Chengen, but the obvious errors raise concerns as to other, less obvious, errors that may pervade and undermine the document as a whole.

*Chengen's Comments*⁸⁰

- New factual information submitted by Chengen demonstrates that the formula used by Chengen is the Chinese National Standard (the Standard), is widely used and generally accepted, and is produced and published by an authoritative source for calculating accurate log volumes.
- The errors in the Standard's tables are typographical with no impact on the accuracy of the formula itself. In context, they are clearly isolated typographical errors where "5.5" should read "5.2" and "9" should read "6."
- Commerce properly found that the errors in the tables have no impact on Chengen's reported log consumption volumes because Chengen's logs are 2.6 meters in length and the errors were identified for different lengths.

⁸⁰ See Chengen's Draft Comments at 1-4.

- These errors have no effect on the accuracy of the Standard, and Commerce should continue to use Chengen’s normal books and records. As a result, Commerce should assign Chengen a margin of 0.00 percent and exclude it from the *Order*.

*Taraca Pacific, et al.’s, Comments:*⁸¹

- Commerce properly followed the Court’s direction to “accept the previously-rejected documents that Chengen presented at verification representing the complete and accurate Chinese National Standard used for volume conversion.”
- Given the dumping margin of 0.00 percent calculated for Chengen, Commerce must find Chengen not subject to the antidumping duty order.

Commerce’s Position:

We disagree with the petitioner, given the Court’s directives in the *Remand Order II*, that there continues to be a basis to disregard Chengen’s reported log FOPs. In *Redetermination I*, we explained in detail that the conversion table and formula used by Chengen to calculate and report the volume of its log consumption were not supported by, or grounded in, record evidence that would allow us to determine that they result in an accurate measure of Chengen’s log consumption during the POI, and that the record lacks third-party confirmation of the volume of Chengen’s POI log consumption.⁸² We also explained why this was of crucial import to the integrity of this proceeding:

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

⁸¹ See Taraca Pacific’s Draft Comments at 2-4.

⁸² See *Redetermination I* at 32-33.

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.⁸³

Despite this further explanation, the CIT instructed Commerce in its *Remand Order II* to “accept the previously rejected documents that Linyi Chengen presented at verification representing the complete and accurate Chinese National Standard used for volume conversion.”⁸⁴ In light of the CIT's rejection of our previous arguments, we must treat, under respectful protest, the log volumes calculated by Chengen as accurate volume conversions in order to comply with the CIT's *Remand Order II*. Because the CIT also ruled that it would be unlawful to find Chengen's documentation unreliable for lack of third-party confirmation,⁸⁵ we must also accept Chengen's purchase VAT invoices as documentation supporting its reported log volume consumption. In light of the CIT's *Remand Order II*, we also cannot question the age of the Standard, or the absence of any information on this record indicating whether it is still in use or whether it has been revised, as a means to ascertain its reliability, as suggested by the petitioner.⁸⁶ Although the petitioner's concerns are valid, and are points on which Commerce could have sought additional information had it been afforded the opportunity to subject the Standard to our normal analytical process, the CIT's conclusion that the Standard represents a complete and accurate formula for volume conversion means that we cannot find the age or lack of supporting information a sufficient basis to disregard the log volumes calculated using that Standard.

With respect to the petitioner's argument that the Standard contains numerous blatant errors and that such errors suggest that other, less obvious, errors may pervade and undermine

⁸³ *Id.* at 21.

⁸⁴ *See Remand Order II* at 14.

⁸⁵ *Id.*

⁸⁶ *See* Petitioner's Draft Comments at 12.

the integrity of the document as a whole,⁸⁷ we also disagree. Specifically, the petitioner points out that the specified length categories contain out-of-sequence lengths (*e.g.*, 5.0, 5.5, 5.4, 5.6, 5.8 and 6.0, 6.6, 6.4, 6.6, 6.8) that would appear to calculate smaller volumes for some logs with larger lengths than other logs.⁸⁸ However, as noted by Chengen,⁸⁹ the majority of the conversion table presents length categories in increments of 0.2 meters (except for logs with lengths of eight to ten meters, which are measured in increments of 0.5 meters) and diameters of four to 120 centimeters in increments of two centimeters. We confirmed that, if the obvious errors are replaced with the expected sequences of 0.2 meters or two centimeters, application of the formula results in the volumes presented in the tables. In other words, we confirmed that the out-of-sequence lengths and diameters are typographical errors, and that the table is not actually applying those figures to calculate the volumes presented. Thus, notwithstanding the fact that the logs reportedly consumed by Chengen during the POI are unaffected by the errors identified by the petitioner, we do not find that these errors impugn the reliability of the table overall because the volumes in the table reflect a correct application of the Chinese National Standard formula.

Issue 1b: Whether Additional Evidence Supports the Intermediate Input Methodology

Petitioner's Comments:

a. Chengen's Records []⁹⁰

- The veneer FOPs reported are based entirely on Bills of Materials (BOMs), which record the amount of [].

⁸⁷ *Id.* at 12-13.

⁸⁸ *Id.*

⁸⁹ See Chengen's Draft Comments at 3.

⁹⁰ See Petitioner's Draft Comments at 15-18.

- Chengen has []
[].
- Chengen calculated its log consumption simply by dividing []
[] and then []
[].
- Although Chengen claims that it has “extensive” production records to document its volume
of veneer production, it only cites the []
[].
- With no real [] [], the total volume of []
[] so it is impossible to calculate the []
[] logs based on [] [].
- None of the log consumption “records” flow to the cost of goods sold (COGS) in Chengen’s
financial statements and, cannot be reconciled to Chengen’s financial statements.
- Chengen reconciled []
[].
- Commerce can overcome these deficiencies by using the product-specific veneer FOPs,
[] [], backed up by [] [], and that []
[] in Chengen’s financial statements.

b. Chengen’s [] is Distorting its Log FOPs⁹¹

⁹¹ *Id.* at 18-22.

- Chengen’s [] is unrealistic and cannot be relied on.
- Chengen’s calculations result in a [] percent loss of logs, which is not possible.
- There is considerable waste from preparing and peeling logs, and Chengen claims to produce pallets from scrap left over from veneer production.
- Data from [] percent, yet Chengen claims to obtain an []].
- In addition to the []].
- Chengen reports [] for different species of wood, [], while [] across all species of wood.
- The [] indicates that Chengen’s record keeping does not allow for accurate [] and demonstrates that log FOPs cannot be more accurate than veneer FOPs, which do not present this problem.

c. Chengen Does Not Account for Grade of Veneers⁹²

- Chengen claims that it does not separately record different veneer grades in accounting or inventory records, yet it recognizes the importance of veneer grade to plywood production by admitting that veneers are sorted, stacked, and used by grade.
- At verification, Chengen stated that it produces face veneer grades [] but only

⁹² *Id.* at 22-24.

uses grades [] for plywood. However, its U.S. sales data contain sales of plywood with face grades of [].

- By not tracking veneer grades, Chengen could be using high quality veneers for plywood and keeping the inferior veneers, which cannot be used to make plywood, in inventory.
- While Chengen’s plywood production [] during the POI, its ending monthly inventory of core veneers []. This could have an effect on the log-to-usable-veneer ratios because it is impossible to determine what grades are used for what purpose, a problem that does not exist for veneer FOPs because [].
- Although we know with absolute certainty the exact amount of veneers used to make subject merchandise, to calculate the log FOPs Chengen must rely on [].

d. []⁹³

- Production of [] because [].
- This means that the [].
- While production and sale of plywood is [].
- The [].

⁹³ *Id.* at 25-27.

].

- The [] is not reflected in Chengen’s conversion ratios, which is [].
- Not all veneers are equal and veneer quality is dependent on log quality. If [].

*e. Log FOPs Result in Inaccurate NV When SVs Are Applied*⁹⁴

- Log FOPs cannot be properly valued because imprecise SVs do not allow for proper valuation of log inputs.
- Harmonized Tariff Schedule (HTS) SV data contain unknown log qualities, not logs representative of the type used to produce plywood.
- Romanian import data for valuing logs vary tremendously from country to country, where German import values were 27 times greater than Ukrainian values.
- The overall Romanian price is dominated by Ukrainian imports, which are 35 times greater in volume than all remaining countries combined.
- It is impossible to determine what type of logs were imported from Ukraine but, given the low prices and shared border, they may be untrimmed, rough timber from a nearby forest of extremely poor quality.
- Romania is not an isolated example of wide variations in log prices. Most log prices for other countries on the surrogate country list are not representative of the quality required for plywood.
- Romanian log prices are [] than actual market value for this input

⁹⁴ *Id.* at 27-32.

and even the NME prices paid by Chengen are [].

- Converting the Romanian poplar log import data values to kilograms (kg) reveals that the per-kg SV for poplar logs is 0.096 Euros/kg, which is more than three times lower than the SV used to value Chengen's scrap.
- In contrast to the log prices, veneer HTS data from Romania are much more consistent, where the highest value is only three times greater than the lowest value, and prices are not dominated by imports from one country.
- Although the species of veneer cannot be determined by the HTS subheading, the degree of variation indicates that these prices are more representative of the prices for plywood production than the logs are of the type used in plywood production.
- At verification, Commerce found that Chengen's logs were delivered in lengths of 2.6 meters, whereas the log HTS subheadings do not specify length.
- Trimming logs to this size (approximately eight feet) would produce a large amount of scrap; a 20-foot log would have to be cut into two eight-foot lengths, and four feet, or 20 percent, would have to be sold at a considerable discount.

Commerce's Position:

We disagree with the petitioner that the additional issues identified warrant reconsideration of our decision to resort to our normal methodology for calculating NV and to not base the calculation of NV on the intermediate input methodology. Commerce's general practice for integrated firms such as Chengen is to value all FOPs used in each stage of production,⁹⁵ and following our consideration of the CIT's *Remand Opinion II* and reevaluation of the evidence, we do not find that the record supports deviation from this normal practice.

⁹⁵ See *Certain Steel Nails from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379 (March 23, 2011) and accompanying IDM at Comment 18.

a. Chengen's Records

The petitioner claims that Chengen's FOPs are reported based entirely on BOMs⁹⁶ but that claim is inaccurate. Although Chengen's allocation methodology partially relies on BOMs for its product-specific consumption rates, its methodology relies on more than just BOMs.⁹⁷ Specifically, Chengen first calculated an [] based on its product-specific BOMs and [] each product.⁹⁸ Chengen then calculated a ratio representing the difference between the [] based on its BOMs and applied that ratio to the [] based on the BOMs, thereby [] by more than just the standard, expected consumption.⁹⁹ Thus, Chengen's reported FOPs are not based entirely on BOMs, as claimed by the petitioner, but also take into account other factors that are reflected in its actual books and records.

Although the petitioner claims that Chengen has [],¹⁰⁰ the record contradicts that claim.¹⁰¹

At verification, Commerce verifiers thoroughly verified Chengen's log consumption and veneer production records supporting its log FOPs, including its []

⁹⁶ See Petitioner's Draft Comments at 15-16.

⁹⁷ See Chengen's March 1, 2017 DQR at Exhibits D-2.3 and D-2.4.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See Petitioner's Draft Comments at 15-16.

¹⁰¹ 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 Verification Exhibit 26 - 28.

],¹⁰² Indeed, while the petitioner argues that the alleged deficiencies in Chengen’s log documentation can be cured by relying upon Chengen’s reported veneer FOPs, much of the same type of documentation used to support Chengen’s log FOPs are also used to support Chengen’s veneer FOPs (*e.g.*, [

]).¹⁰³ However, because the veneers are self-produced, there are no [] for the veneers, whereas the record contains such documentation for logs.¹⁰⁴ Although the petitioner contends that Chengen’s log records do not flow to the COGS in its financial statements, while its veneer FOPs [] in Chengen’s financial statements,¹⁰⁵ we disagree. First, we note that Chengen and its affiliated producer, Linyi Dongfangjuxin Wood Co., Ltd. (Dongfangjuxin),¹⁰⁶ both submitted audited financial statements covering the POI.¹⁰⁷ Those financial statements contained unqualified auditors’ opinions stating [

].¹⁰⁸ Second, the petitioner’s claim that Chengen’s log records do not flow to its financial statements neglects to consider on what basis Chengen’s self-produced veneers were valued in its accounting records. Specifically, Chengen’s [] demonstrates that the [

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *See, e.g.*, Chengen Verification Report at Verification Exhibit 26.

¹⁰⁵ *See* Petitioner’s Draft Comments at 17-18.

¹⁰⁶ *See* Memorandum, “Preliminary Determination of Affiliation for Linyi Chengen Import and Export Co., Ltd. and Linyi Dongfangjuxin Wood Co., Ltd.,” dated June 16, 2017.

¹⁰⁷ *See* Chengen’s August 29, 2017 Supplemental Questionnaire Response at Exhibits 3 and 4.

¹⁰⁸ *Id.*

].¹⁰⁹ Because the value of Chengen’s log consumption is [] of Chengen’s veneers, and, as observed in Chengen’s Verification Report, we were able to tie the semi-finished goods cost of production ledger to the veneer semi-finished goods ledger and then to the plywood cost of production ledger,¹¹⁰ we were able to tie the value of logs to the financial statements.

b. Chengen’s []

We disagree with the petitioner that Chengen’s [] is unrealistic and cannot be relied on.¹¹¹ We thoroughly verified documentation supporting Chengen’s reported [] and, given that the CIT directed us to accept the “accurate and complete” Chinese National Standard and require no third-party corroboration despite our concerns regarding the volume calculation formula, we have no basis to reject the quantities reported.¹¹² Although Chengen’s [] may be different than the petitioner’s experience, Chengen’s documentation supported its reported consumption and production data. Moreover, while the petitioner argues that a [] percent loss of logs is not possible, we note that this loss only applies to Chengen’s core veneer production, which do not have the same physical and quality requirements as face veneers. Specifically, in addition to differences in physical properties, explained below, Chengen reported all of its core veneers as a single “Core Grade,”¹¹³ which means “the veneers can have cracks, holes, stains, {and} knots.”¹¹⁴ At verification, we observed workers “repairing veneers by filling in holes with

¹⁰⁹ See Verification Report at Verification Exhibit 26, p. 82.

¹¹⁰ *Id.* at 21.

¹¹¹ See Petitioner’s Draft Comments at 18-22.

¹¹² See Verification Report at 20-21 and Verification Exhibits 26-28.

¹¹³ See Chengen’s February 28, 2017 Section C Questionnaire Response (Chengen’s February 28, 2017 CQR) at 10.

¹¹⁴ See Chengen’s March 29, 2017 Supplemental Section C Questionnaire Response (Chengen’s March 29, 2017 SCQR) at 5.

pieces of wood and tape,”¹¹⁵ which would leave noticeable defects on face/back veneers such that they may no longer be suitable as face/back veneers. In contrast, Chengen’s face veneer [],¹¹⁶ which is much closer to the [] referenced by the petitioner.¹¹⁷

We also note that Chengen’s claim that the Chinese National Standard accounts for the taper coefficient of the log and results in a volume in excess of the volume of a simple cylinder¹¹⁸ lends additional support to Chengen’s []. Specifically, if we compare the volumes calculated using the Chinese National Standard and the volume of a uniform cylinder ($V=\pi r^2L$)¹¹⁹ for the size of logs Chengen reported using,¹²⁰ the difference approximates Chengen’s core veneer []:

¹¹⁵ See Chengen Verification Report at 14.

¹¹⁶ See Chengen’s March 1, 2017 DQR at Exhibit D-2-1.

¹¹⁷ See Petitioner’s Draft Comments at 20 (“the [] {percent}.”).

¹¹⁸ See, e.g., Chengen FI Comments at 3.

¹¹⁹ *Id.*

¹²⁰ See Chengen Verification Report at 11 (“Company officials explained that all logs are purchased at 2.6 meters long. Analysts observed that the logs in the log inventory were generally of the same length and of varying diameters between approximately 20 and 40 centimeters.”).

| | | China Standard Cylinder | | |
|---------------|----|-------------------------|--------|------------|
| | | Length (meters) | | |
| | | 2.6 | 2.6 | Difference |
| Diameter (cm) | 20 | 0.0966 | 0.0817 | 15% |
| | 22 | 0.1160 | 0.0988 | 15% |
| | 24 | 0.1372 | 0.1176 | 14% |
| | 26 | 0.1601 | 0.1380 | 14% |
| | 28 | 0.1848 | 0.1601 | 13% |
| | 30 | 0.2113 | 0.1838 | 13% |
| | 32 | 0.2396 | 0.2091 | 13% |
| | 34 | 0.2696 | 0.2361 | 12% |
| | 36 | 0.3015 | 0.2646 | 12% |
| | 38 | 0.3350 | 0.2949 | 12% |
| | 40 | 0.3704 | 0.3267 | 12% |
| | 42 | 0.4075 | 0.3602 | 12% |
| | 44 | 0.4465 | 0.3953 | 11% |
| | 46 | 0.4871 | 0.4321 | 11% |
| | 48 | 0.5296 | 0.4705 | 11% |

In other words, Chengen’s [] appears to correspond to the amount of material needed to remove the taper of a log until it is a uniform cylinder and more suitable for the rotary peeling process.

The petitioner also points out that, in addition to the loss from the conversion from logs to veneer, there is also additional yield loss in the conversion to plywood. Chengen accounts for that yield loss in its calculations when, as discussed above, it allocates veneer consumption amounts [] its BOMs indicate [] consumed in production.¹²¹ Although the petitioner argues that the [], depending on whether the veneers are designated as [] veneer are atypical, it does not seem unusual that, given the different quality requirements, this could be the case. Based on

¹²¹ See Chengen’s March 1, 2017 DQR at Exhibits D-2.3 and D-2.4.

Chengen’s BOMs, it is apparent that the physical properties of the core veneers are much different than its face/back veneers, where Chengen’s core veneers range from [] thick, while its face veneers are [] thick and its core veneers are [] the size of its face/back veneer.¹²² In addition, while the petitioner provided [

] ¹²³ the record does not include any documentation supporting the claims made in the []. However, we note that in a discussion regarding the [

].¹²⁴ This statement would appear to support Chengen’s yield conversion rates.

Accordingly, we find that Chengen’s reported [] does not provide sufficient basis for disregarding Chengen’s log consumption FOPs in light of the other record evidence and the CIT’s *Remand Order I* and *Remand Order II*.

c. Chengen’s Grade of Veneers

We disagree with the petitioner that we should apply the intermediate input methodology merely because Chengen does not record the grade of the veneers it consumed. Most importantly, the SV used in the *Final Determination* to value all of Chengen’s veneers does not itself account for grade and the subheading is only described as “Sheets For Veneering, Including Those Obtained By Slicing Laminated Wood, For Plywood Or For Other Similar

¹²² See Chengen’s May 16, 2017 Supplemental Questionnaire Response at Exhibit 22.

¹²³ See Petitioner’s Draft Comments at 20; see also Petitioner’s Letter, “Submission of New Factual Information and Surrogate Values,” dated May 17, 2017 (Petitioner’s Pre-prelim SV Comments), at Exhibit 4.

¹²⁴ See Petitioner’s Pre-prelim SV Comments at Exhibit 4.

Laminated Wood And Other Wood, Sawn Lengthwise, Sliced Or Peeled, Whether Or Not Spliced, Of A Thickness Of > 1 Mm.”¹²⁵ Thus, while the petitioner argues that Chengen could be [

], there would be no practical effect given that the SV applied to veneer FOPs does not reflect veneer grade. In addition, Chengen reported in its U.S. sales database sales of plywood with face/back veneers of grades [],¹²⁶ indicating that it was not []. Although the petitioner points to a discrepancy in the verification report regarding the grades of face veneers produced and consumed by Chengen,¹²⁷ the face veneer grades reported in its U.S. sales database were verified and verifiers found no discrepancies in Chengen’s reported data and supporting documentation regarding the grade of veneers of the plywood sold.¹²⁸ To the extent that the petitioner is arguing that a failure to track core veneer grade somehow impugns the quality of Chengen’s data, Chengen reported all of its core veneers as a single “Core Grade,”¹²⁹ which means “the veneers can have cracks, holes, stains, {and} knots,”¹³⁰ and also stated that, because the core veneers are not visible in the final product, there are very few core veneers that are not usable.¹³¹

The petitioner argues that, while Chengen’s [] during the POI, its ending monthly inventory of core veneers [], postulating that this could have an effect on the log-to-usable veneer ratios.¹³² However, as noted above, Chengen

¹²⁵ See Memorandum, “Surrogate Values for the Final Determination,” dated November 6, 2017.

¹²⁶ See Chengen’s Letter, “Revised U.S. Sales Database,” dated September 29, 2017, and accompanying U.S. sales database.

¹²⁷ See Petitioner’s Draft Comments at 22-23.

¹²⁸ See Chengen Verification Report at 17-18.

¹²⁹ See Chengen’s February 28, 2017 CQR at 10.

¹³⁰ See Chengen’s March 29, 2017 SCQR at 5.

¹³¹ See Chengen’s Rebuttal Brief, “Redacted Rebuttal Brief,” dated October 20, 2017 at 12.

¹³² See Petitioner’s Draft Comments at 23-24.

reported using virtually all of its core veneers. Second, the record contains inventory movement schedules that illustrate Chengen’s production and consumption for the POI, as well as the entire calendar year.¹³³ Looking at the calendar year, it is clear from the following chart that

Chengen’s plywood production []:

[

].¹³⁴

The data also indicate that, while there was fluctuation of [], there was also fluctuation in Chengen’s [] (*see* chart below) and that the [] towards the end of the POI also coincided with [

]:

[

¹³³ See Verification Report at Verification Exhibit 36.

¹³⁴ *Id.*

].¹³⁵

However, because Chengen's FOPs are based on [] levels, the amount of veneers [] should not have an impact on the accuracy of the reported FOPs. In addition, although Chengen calculated a POI-wide log-to-veneer conversion rate, the record also contains monthly data that demonstrate [], despite fluctuations in [] levels. For example, this table of Chengen's monthly core veneer conversion rates details the variation in Chengen's conversion rates during the POI:

[

¹³⁵ *Id.*

].¹³⁶

Accordingly, we do not find that any [] between Chengen's veneer production and its plywood production should impact the accuracy of its reported FOPs.

d. Log SVs Do Not Produce Accurate Results

Finally, we disagree with the petitioner's argument that alleged deficiencies in the log SVs warrant a departure from our normal methodology and application of the intermediate input methodology. While the petitioner critiques the variation in import data prices,¹³⁷ comparing one high value with a lower value, even significantly lower, is insufficient evidence that one or the other is aberrational.¹³⁸ Without any additional reference points, a party can just as easily make the claim that either value is aberrational in comparison to the other, without sufficient evidence to draw a conclusion either way.¹³⁹ Moreover, the petitioner's argument is based on the log import values that were submitted by Chengen and not the log SVs Commerce actually used in the *Preliminary Determination*, which show considerably less variation.¹⁴⁰ Specifically, the petitioner pointed out that the Romanian log prices range from \$39.55/M³ to \$1,059/M³, where a German import value was 27 times greater than the Ukrainian value.¹⁴¹ However, the import

¹³⁶ *Id.*

¹³⁷ See Petitioner's Draft Comments at 27-28.

¹³⁸ See, e.g., *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009) and accompanying IDM at Comment 5B.

¹³⁹ *Id.*

¹⁴⁰ See Memorandum, "Surrogate Values for the Preliminary Determination," dated June 16, 2017 at Attachment 2.

¹⁴¹ See Petitioner's Draft Comments at 28.

data used by Commerce in both the *Preliminary Determination* and in the Draft Results of Redetermination are significantly different:

| Row Labels | Sum of Quantity | Sum of Value | AUV (Euro/M ³) |
|--------------------|-----------------|----------------|----------------------------|
| 44039910 | 30675 | 1239262 | |
| Bulgaria | 68 | 3406 | 50.08823529 |
| Hungary | 3149 | 229055 | 72.73896475 |
| Italy | 205 | 23571 | 114.9804878 |
| Ukraine | 27253 | 983230 | 36.07786299 |
| Grand Total | 30675 | 1239262 | 40.3997392 |

As demonstrated above, the highest log value from Italy is only approximately three times as large as the lowest value from Ukraine, and Germany is absent from Commerce’s data. Accordingly, the petitioner’s arguments concerning the import data are misplaced. In addition, although the petitioner argues that it is impossible to determine what type of logs are represented in the Ukrainian imports and that they therefore must be untrimmed, rough timber from a nearby forest of extremely poor quality, its claim is mere speculation.

Although the petitioner argues that the Romanian log import values are artificially low, it concedes that data from all countries on the surrogate country list suffer the same deficiency,¹⁴² which, absent any benchmarking or corroborating information, does not support the claim that the Romanian data are somehow unusual. The petitioner also draws a comparison between the NME prices Chengen paid for its [] logs in order to question the SVs reliability,¹⁴³ but the reason Commerce employs a special methodology for NME countries is that the domestic prices are wholly unreliable for any purposes. Commerce has a clear and established practice of not relying on NME transaction prices because they do not represent

¹⁴² *Id.* at 28-29.

¹⁴³ *Id.* at 29.

prices that are driven by market factors.¹⁴⁴ Accordingly, we do not find that the record supports the application of the intermediate input methodology due to a lack of reliable log pricing.

After closely examining the record of this investigation and taking into consideration the CIT's *Remand Order I* and *Remand Order II*, we do not conclude that the facts merit departing from our normal methodology of valuing all of a respondent's FOPs in favor of an alternative methodology.

Issue 2: Whether Adverse Facts Available (AFA) is Warranted for Chengen

*Petitioner's Comments:*¹⁴⁵

- The record lacks complete, reliable, and usable information for the single most important material input and the shortcomings in the record are due to Chengen's failure to cooperate.
- Chengen's [] is demonstrably unrealistic and conflicts with other record information.
- Chengen reported contradictory information regarding the [].
- There are a multitude of additional inconsistencies in Chengen's reporting.
- Commerce has already recognized that Chengen failed to timely provide important information regarding its log consumption, most notably the log volume conversion formula, and that failure impeded its investigation.
- Chengen failed to disclose that it did not receive any invoices from its suppliers of poplar logs and instead provided misleading information that it relied on material purchase invoices.

¹⁴⁴ See, e.g., *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying IDM at Comment 10.

¹⁴⁵ See Petitioner's Draft Comments at 33-36.

- Given that these failures related to critical information regarding logs, the most important FOP, the record cannot support a conclusion that Chengen acted to the best of its ability and AFA should be applied.

Commerce’s Position:

We disagree with the petitioner that the application of total AFA to Chengen is warranted for these final results of redetermination. At verification, Commerce made several observations that conflicted with our understanding, based on Chengen’s prior record submissions, of Chengen’s production process 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.¹⁴⁶ Specifically, Commerce observed that, when logs are delivered by suppliers, the production manager “will record the quantity of the logs purchased in cubic meters” and “derives the cubic meters for the quantity batch based on log length and log diameter” using the conversion table¹⁴⁷ now on the record as part of the Chinese National Standard. Also at verification, Commerce learned that Chengen’s popular suppliers do not provide an invoice.¹⁴⁸ These belated disclosures informed our conclusion that the application of the intermediate input methodology provided a more accurate calculation of NV, but we did not apply the intermediate input methodology as a form of AFA.¹⁴⁹

Additionally, section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall apply “facts otherwise available” if: (1) necessary information is not the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner

¹⁴⁶ See *Final Determination* IDM at Comment 2; see also *Remand I* at 6-7.

¹⁴⁷ See Verification Report at 11.

¹⁴⁸ *Id.* at 13.

¹⁴⁹ See *Final Determination* IDM at Comment 2.

requested by Commerce, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Given that we must accept Chengen's use of the Chinese National Standard as part of its log conversion methodology, and that we must require no third-party corroboration of the self-generated purchase invoices, and because the record does not otherwise detract from Chengen's reported log volume (*see* Issue 1), Commerce is unable to find that there is any gap in the record or information that must be filled with facts available.¹⁵⁰ Indeed, the CIT's *Remand Order II* appears to support a view, with which we respectfully disagree, that verification was an appropriate time for this information to be submitted.¹⁵¹ Consequently, rather than impugn the underlying data reported to Commerce during the LTFV investigation, Chengen's log conversion methodology and purchase VAT invoices provide additional support for that data, which nevertheless remain unchanged. There has been no new information placed on the record, nor arguments concerning the record evidence, that provide a basis to now conclude that the information is unusable. Accordingly, we do not find that total AFA is warranted for Chengen.

Issue 3: Whether the Separate Rate Should be Revised¹⁵²

*Dehua TB, et al., Comments.*¹⁵³

- Commerce's calculation of the separate rate is not in accordance with the law and must be revised. Accordingly, Commerce should assign the separate rate respondents a zero margin in the final redetermination.

¹⁵⁰ *See* section 776(a) of the Act.

¹⁵¹ *See Remand Order II* at 11.

¹⁵² Taraca Pacific, et al., supported the comments filed by Zhejiang Dehua, et al., and SRA Plaintiffs on this matter.

¹⁵³ *See* Dehua TB's Draft Comments at 2-5.

- Although the Courts have found that an average of *de minimis* and AFA rates is theoretically allowed, the Court has consistently found the methodology unreasonable in practice.¹⁵⁴
- The rate for non-mandatory cooperative respondents must bear some relationship to the actual dumping margins and be reasonably reflective of potential margins for non-investigated exporters.¹⁵⁵
- In *Changzhou Hawd CAFC 2017*, the Court of Appeals for the Federal Circuit (CAFC) rejected the average of zero and *de minimis* rates of the selected mandatory respondents with the rate for the China-wide entity.¹⁵⁶
- In *Navneet Publications*, the CIT rejected an average of the zero and 22.02 percent AFA rates as the all-other rate, even though the AFA rate was derived from actual sales data reported by a cooperative respondent.
- Commerce must justify the use of an AFA rate in the calculation of the dumping margin for separate rate respondents and cite to evidence that the rate bears a relationship to the actual margins of dumping for cooperative separate rate respondents.

*SRA Plaintiff's Comments:*¹⁵⁷

- The 183.36 percent rate calculated for Bayley was based on Chengen's dumping margin calculated in the *Final Determination*, which is now revised, and can no longer be the basis of any rate, including for the China-wide entity.

¹⁵⁴ *Id.* at 2-3 (citing *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370 (Fed. Cir. 2013) (*Bestpak*); *Navneet Publications (India) Ltd. v. United States*, 999 Fed. Supp. 2d 1354 (CIT 2014) (*Navneet Publications*); and *Baroque Timber Industries (Zhongshan) Company Limited v. United States*, 971 F. Supp. 2d 1333 (CIT 2014) (*Baroque Timber*)).

¹⁵⁵ *Id.* (citing *Bestpak*, 716 F.3d at 1379; and *Baroque Timber*, 971 F. Supp. 2d, at 1342).

¹⁵⁶ *Id.* at 4 (citing *Changzhou Hawd Flooring Co, Ltd. v. United States*, 848 F.3d 1006 (Fed. Cir. 2017) (*Changzhou Hawd CAFC 2017*)).

¹⁵⁷ See SRA Plaintiff's Comments at 2-9.

- Commerce can select a rate obtained in the investigation, such as a rate calculated for Chengen, or, as in the *Preliminary Determination*, a rate from secondary information, such as the petition.
- The 183.36 percent rate cannot be used as the cash deposit rate or the rate for the China-wide entity for any future reviews, including in the final results of AR1.
- In *Steel Kegs from China Final*, Commerce calculated a zero percent dumping margin for a mandatory respondent and found the other uncooperative mandatory respondent ineligible for a separate rate and part of the China-wide entity. Commerce assigned the zero percent rate as the separate rate, citing to *Changzhou Hawd CAFC 2017*.¹⁵⁸ With the same facts, Commerce chose a different separate rate methodology in the draft results of redetermination, without explanation.
- In *Bestpak*, the CIT ruled that Commerce cannot include a rate assigned to the NME-wide entity in the calculation of a rate for cooperative exporters found to be separate from the NME-wide entity.
- Because Bayley's data are highly comparable to Chengen's, Bayley's dumping margin would have also been *de minimis*.
- Commerce has no basis to average the rate for the China-wide entity with Chengen's rate as the rate for non-examined, separate companies.
- *Albermarle* and *Changzhou Hawd CAFC 2017* place the burden on Commerce to establish that the separate rate companies are not like the individually-examined exporter, rather than placing that burden on the non-examined companies that are eligible for a separate rate.

¹⁵⁸ *Id.* at 3-4 (citing *Refillable Stainless Steel Kegs Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 84 FR 57010 (October 24, 2019) (*Steel Kegs from China Final*) and accompanying IDM).

- There is no record information indicating that the separate rate companies' costs and selling experience is different than Chengen's experience. Instead, there is a statutory assumption that the mandatory respondent's rate reasonably approximates the estimated weighted-average dumping margins of cooperating exporters.
- Commerce must assign Chengen's zero rate to the non-examined, separate rate companies and, given no evidence of dumping, should exclude the separate rate respondents.

Commerce's Position:

We disagree with Dehua TB, *et al.* and SRA Plaintiffs that Commerce erred in the Draft Results of Redetermination by averaging the zero rate calculated for Chengen and the total AFA rate assigned to the China-wide entity, and then using the resulting rate as the rate assigned to the non-examined, separate rate companies participating in this litigation.

Normally, Commerce's practice is to assign to separate-rate entities that were not individually examined a rate equal to the average of the rates calculated for the individually-investigated respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA, consistent with section 735(c)(5)(A) of the Act.¹⁵⁹ Where the estimated weighted-average dumping margins for all exporters and producers individually investigated are zero, *de minimis*, or determined entirely under section 776 of the Act, the Act provides an exception to the general rule to calculate the estimated "all-others" rate.¹⁶⁰ Under the exception to the general rule for determining the all-others rate, Commerce may use "any reasonable method to establish the rate

¹⁵⁹ See *Bestpak*, 716 F.3d at 1374, citing, *Transcom, Inc. v. United States*, 294 F.3d 1371, 1374 (Fed. Circ. 2002); see also e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

¹⁶⁰ See section 735(c)(5)(B) of the Act.

for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.”¹⁶¹ As noted above, the SAA states that, under the exception to the general rule, “the expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available.”¹⁶² However, the SAA goes on to state that, “if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.”¹⁶³ In this redetermination, because there are no calculated rates for individually-investigated respondents other than zero or rates based on total AFA, we have applied the simple average of the revised AFA rate of 114.72 percent and the zero rate calculated for Chengen as a reasonable method to determine the rate assigned to the producer/exporter combinations that are party to this litigation and that have been found to be eligible for a separate rate. The record evidence indicates that the expected method (*i.e.*, assigning Chengen’s 0.00 percent rate) would not be reasonably representative of the potential dumping margins for non-individually investigated exporters, as explained below. Accordingly, we determine for these final results of redetermination that the average of Chengen’s zero percent rate and the AFA rate applied to the China-wide entity (which includes Bayley) is a reasonable method and, thus, in accordance with the Act and the SAA.

Although Dehua TB, *et al.* and SRA Plaintiffs point to *Bestpak*, *Baroque Timber*, and *Navneet Publications* to support the argument that an average of the zero and AFA rates is inappropriate, or that inclusion of a rate based on facts available in the calculation of the separate

¹⁶¹ *Id.*

¹⁶² *See* SAA at 870-873.

¹⁶³ *Id.*

rate is unlawful, we disagree. Specifically, in *Bestpak*, the CAFC observed that “{the Act} and the SAA explicitly allow Commerce to factor both *de minimis* and AFA rates into the calculation methodology” and that this methodology was “derived from the relevant statutory language.”¹⁶⁴ Based on the ruling in *Bestpak*, the CIT found in *Baroque Timber* that “it is not *per se* unreasonable for Commerce to use a simple average of *de minimis* and AFA rates to calculate the separate rate antidumping duty margin.”¹⁶⁵ Similarly, the CIT ruled in *Navneet Publications* that “the all-others rate statute expressly permits the inclusion of facts available rates” and noted that the CAFC “summarily rejected the argument that Commerce may never use an AFA rate when deriving a ‘separate rate’ for cooperative, uninvestigated respondents in {an NME} proceedings.”¹⁶⁶

However, *Navneet Publications*, and also *Albermarle*, to which Dehua TB, *et al.*, and SRA Plaintiffs frequently cite,¹⁶⁷ involved litigation of the final results of an administrative review, rather than the final determination in an LTFV investigation, as is the case here. An administrative review is distinct from an LTFV investigation because the review additionally involves the assessment of AD duties on entries during the period of review. In contrast, an LTFV investigation potentially results in the imposition of an estimated cash deposit rate that subsequently may be examined in an administrative review; in this proceeding, the cash deposit rates determined in this litigation will be largely superseded by cash deposit requirements calculated when the final results of the first administrative review of this order are completed.¹⁶⁸

¹⁶⁴ See *Bestpak*, 716 F. Supp. 3d at 1378.

¹⁶⁵ See *Baroque Timber*, 971 F. Supp. 2d at 1341.

¹⁶⁶ See *Navneet Publications*, 999 F. Supp. 2d at 1358-59.

¹⁶⁷ See *Albermarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345 (Fed. Circ. 2016) (*Albermarle*).

¹⁶⁸ See *ARI Prelim Results PDM*.

As explained above, in the *Preliminary Determination*, we used the simple average of the AFA rate applied to the China-wide entity, including mandatory respondent Bayley, and the zero percent rate calculated for mandatory respondent Chengen for purposes of determining the rate assigned to the companies found eligible for a separate rate, noting that, at that time, this was wholly consistent with Commerce’s practice.¹⁶⁹ As also noted by Dehua TB, *et al.* and SRA Plaintiffs, we recognize that since the *Final Determination*, in *Steel Kegs from China Final*, Commerce assigned a separate rate of zero percent based on the zero percent margin calculated for the single fully-cooperative mandatory respondent.¹⁷⁰ In so doing, we noted that this method was consistent with the CAFC’s decision in *Changzhou Hawd CAFC 2017*.¹⁷¹ In *Steel Kegs from China Final*, Commerce individually investigated two mandatory respondents, only one of which, Ningbo Master International Trade Co., Ltd. (Ningbo Master), participated, receiving a calculated estimated weighted-average dumping margin of zero percent, while the other mandatory respondent stated its intention not to participate in the investigation before questionnaire responses were due.¹⁷² However, the decision in *Steel Kegs from China Final* was based on an administrative record distinct from the record of this investigation; in that investigation and under different facts, Commerce concluded that a separate rate of zero would

¹⁶⁹ See *Preliminary Determination* PDM at 21 (citing to *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 10545 (March 11, 2009); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Light-Walled Rectangular Pipe and Tube from the Republic of Korea*, 73 FR 5794, 5800 (January 31, 2008), unchanged in *Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from the Republic of Korea*, 73 FR 35655 (June 24, 2008)).

¹⁷⁰ See *Steel Kegs from China Final* IDM at “Separate Rates.”

¹⁷¹ *Id.* (citing *Changzhou Hawd CAFC 2017*, 848 F.3d 1006).

¹⁷² See *Refillable Stainless Steel Kegs 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, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 25745 (June 4, 2019) and accompanying PDM.

be reasonably reflective of potential dumping margins for non-investigated companies and did not deviate from the expected method, which is not the case here.

In the *Final Determination*, we based the estimated dumping margin for the China-wide entity, determined using total AFA, on the rate calculated for Chengen, because it was the higher of the highest dumping margin alleged in the petition and the highest calculated dumping margin of any respondent in the investigation.¹⁷³ In these final results of redetermination, the rate calculated for Chengen has been revised, under respectful protest, resulting in a zero percent rate. Because Chengen's rate is no longer greater than the highest dumping margin alleged in the petition, we have revised the 183.36 percent rate assigned to the China-wide entity in the *Final Determination* to the highest petition rate of 114.72, consistent with the *Preliminary Determination*. This rate was corroborated, to the extent practicable, within the meaning of section 776(c) of the Act in the *Preliminary Determination* using our pre-initiation analysis of the reliability and relevance of the information in the petition.¹⁷⁴ We adopt the corroboration analysis in the *Preliminary Determination* for purposes of our final results of redetermination. Consistent with the *Preliminary Determination*, we are not revising the cash deposit rate for China-wide entity to adjust for export subsidies because the lowest export subsidy rate determined for any party in the companion countervailing duty proceeding was 0.00 percent.¹⁷⁵

Although Dehua TB, *et al.*, SRA Respondents, and Taraca Pacific, *et al.* argue that Commerce should assign Chengen's zero percent rate to all separate rate recipients, we have considered several factors and find that averaging the rates of Chengen and the China-wide entity

¹⁷³ In investigations Commerce's practice is to select, as an AFA rate, the higher of: (a) the highest dumping margin alleged in the petition; or, (b) the highest calculated dumping margin of any respondent in the investigation. *See Final Determination*, 82 FR at 53462.

¹⁷⁴ *See Preliminary Determination* PDM at "Selection and Corroboration of the AFA Rate."

¹⁷⁵ *Id.* at 41-42.

is reasonable and consistent with the law. Specifically, this method reflects the exception to the general rule expressly contemplated by the Act, which allows for “any reasonable method to establish” the separate rate.¹⁷⁶ This method also conforms with the exception to the expected method contemplated by the SAA, which allows Commerce to use “other reasonable methods” if the expected method results in rates not “reasonably reflective of *potential* dumping margins for non-investigated” companies.¹⁷⁷

As the court noted in *Albermarle*, and upheld in *Changzhou Hawd CAFC 2017*, the rates determined for the “mandatory respondents are assumed to be representative” of the experience of the non-selected companies.¹⁷⁸ However, as the CAFC noted in *Changzhou Hawd CAFC 2017*, the “presumption of representativeness may be overcome” based on a finding that there is a “reasonable basis for concluding that the separate respondents’ dumping is different” from the mandatory respondents.¹⁷⁹ Here, in addition to Chengen, Commerce selected Bayley as a mandatory respondent in this investigation.¹⁸⁰ Commerce issued the initial and supplemental questionnaires to Bayley, and received timely filed questionnaire responses, between January and April 2017.¹⁸¹ Bayley was individually investigated in depth and the information that it placed on the record was found to be deficient in several significant respects.¹⁸² In particular, Commerce concluded that the record did not contain complete information regarding Bayley’s ownership and management and, based on Bayley’s failure to provide that essential information,

¹⁷⁶ See section 735(c)(5)(A)-(B) of the Act.

¹⁷⁷ See SAA at 873 (emphasis added).

¹⁷⁸ See *Changzhou Hawd CAFC 2017*, 843 F.3d at 1012 (citing *Albermarle*, 821 F.3d at 1351-54) (explaining that, under *Albermarle*, Commerce cannot “deviate from the expected method unless it is found, based on substantial evidence, that the separate-rate firms’ dumping is different from that of the mandatory respondents.”).

¹⁷⁹ *Id.*

¹⁸⁰ See *Preliminary Determination PDM* at “Application of AFA: Bayley.”

¹⁸¹ *Id.*

¹⁸² *Id.*; see also *Final Determination IDM* at Comment 1.

Commerce found Bayley to be part of the China-wide entity.¹⁸³ Based on that conclusion, we cannot presume that Chengen's rate, who is only one of two mandatory respondents in this investigation, is reasonably reflective of the potential dumping margins for the non-investigated companies.

Further, additional record evidence indicates that affirmative dumping potentially existed during the POI, such that the zero percent rate calculated for Chengen would not be representative of the estimated dumping margins for the non-investigated companies.

Specifically, the dumping margins alleged in the Petition were based on actual price quotes for subject merchandise exported from China to customers in the United States during the POI by an exporter other than Chengen, *i.e.*, []. Significantly, [

] was among the significant exporters of plywood during the POI, and it is also a separate rate recipient in this investigation.¹⁸⁴ Based on price quotes for [

] plywood, both mainstream plywood products, the Petition supported calculated margins of 114.72 and 104.06 percent.¹⁸⁵ Thus, record evidence demonstrates that potential dumping by the separate rate companies existed during the POI far in excess of the zero percent rate calculated for Chengen. Accordingly, finding that Chengen's estimated weighted-average

¹⁸³ See *Preliminary Determination* PDM at "Application of AFA: Bayley." Specifically, we stated that "Bayley failed to cooperate by not acting to the best of its ability to comply with our requests for information" and, as a result, "an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act." In the accompanying *Preliminary Determination*, we stated that "Bayley, a mandatory respondent in this investigation, and certain separate-rate respondents did not demonstrate that they were entitled to a separate rate. Accordingly, we consider these companies to be part of the PRC-wide entity." See *Shandong Dongfang Bayley Wood Co. v. United States*, 375 F. Supp. 3d 1339 (CIT 2019), upholding this finding.

¹⁸⁴ See "Certain Hardwood Plywood Products from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties," dated November 18, 2016 at Volume II, p 3 and Exhibits II-2 and II-3; *see also Order*.

¹⁸⁵ See Petitioner's Letter, "Response to the Department's November 22, 2016 Supplemental Questions Regarding Volume II of the Petition for the Imposition of Antidumping Duties," dated November 29, 2016, at Exhibits 2 and 11.

dumping margin is not representative of the separate-rate companies' dumping, Commerce is averaging Chengen's zero percent rate with the China-wide entity's 114.72 percent rate.

This method of calculating the separate rate by averaging the rates for Chengen and the China-wide entity is also reasonable under the Act. The Act grants Commerce the discretion to use "any reasonable method" to establish the all-others rate in a market economy investigation, and Commerce reasonably applies this provision to calculate the separate rate in a non-market economy proceeding. The statute also directly contemplates an averaging of zero and *de minimis* rates with rates based on total facts available in the calculation of the all-others rate.

Recognizing here that Chengen's rate is not representative of the separate rate companies' dumping, we are using a reasonable method under the exception to the expected method, but we note that our selected method is akin to the expected method in that we are averaging the rates determined in this investigation for the individually-investigated companies (*i.e.*, the rates for the companies selected as mandatory respondents: Chengen and Bayley, which has been determined to be part of the China-wide entity).

Although the SRA Plaintiffs claim that Bayley's dumping margin would have been *de minimis* because its reported data were highly comparable to that of Chengen, SRA Plaintiffs cite to no record information to support this claim.¹⁸⁶ To the contrary, because the deficiencies in Bayley's reported information relate to corporate structure and affiliations, Commerce cannot be certain that all of Bayley's sale and FOP data were reported or that it could have been possible for Commerce to calculate an accurate rate based on Bayley's reported data.¹⁸⁷ In addition, a cursory analysis indicates that Bayley's reported data are widely divergent from Chengen's data.

¹⁸⁶ See SRA Plaintiff's Draft Comments at 4.

¹⁸⁷ See *Preliminary Determination* PDM at "Application of AFA: Bayley."

Specifically, while Chengen consumed only poplar, birch, and eucalyptus wood species to produce the plywood sold during the POI,¹⁸⁸ Bayley consumed poplar, eucalyptus, paulownia, birch, alder, ayous, cherry, lauan, maple, red oak, walnut, and okoume wood species, as well as medium density fiberboard.¹⁸⁹ Record evidence indicates that wood species is an important factor in terms of prices and cost. Specifically, “{r}arer woods and more aesthetically pleasing woods will command a higher price to the consumer (as well as cost to the producer) than will woods that are more common and are less visually pleasing to the consumer.”¹⁹⁰ In addition, “certain types of hardwood (*e.g.*, birch) are widely abundant in China and nearby Siberian Russia, are easy to obtain, and cost less to acquire and manufacture than other hardwoods.”¹⁹¹ Finally, it is apparent that the products sold by Chengen and Bayley were also widely divergent.¹⁹² Thus, contrary to the SRA Plaintiffs’ claims, there are simply no conclusions that can reasonably be drawn regarding what Bayley’s margin would have been, had we used its data to calculate an estimated weighted-average dumping margin.

Accordingly, for the final results of redetermination, we continue to find that it is reasonable and supported by the record to calculate the estimated dumping margin for the non-examined, separate rate companies as the simple average of the zero percent rate for Chengen and the AFA rate for the China-wide entity. Using this method, for these final results of redetermination, we calculated a rate of 57.36 percent for the non-examined companies found eligible for a separate rate that are party to this litigation.¹⁹³

¹⁸⁸ See Chengen’s February 28, 2017 Section D Questionnaire Response (Chengen’s February 28, 2017 DQR) at Exhibit D-4.

¹⁸⁹ See Bayley’s March 3, 2017 Section D Questionnaire Response (Bayley’s March 3, 2017 DQR) at Exhibit D-4.

¹⁹⁰ See Petitioner’s Letter, “Comments on Physical Characteristics,” dated December 22, 2016, at 4.

¹⁹¹ *Id.*

¹⁹² See Chengen’s February 28, 2017 DQR at Exhibit D-1; and Bayley’s March 3, 2017 DQR at Exhibit D-1.

¹⁹³ See Attachment.

Issue 4: Whether Voluntary Respondents Should be Excluded from the *Order*

*SRA Plaintiffs Comments:*¹⁹⁴

- Commerce should assign the three companies that requested mandatory or voluntary respondent status, Linyi Sanfortune, Xuzhou Jiangyang, and Xuzhou Longyuan, Chengen's margin and exclude them from the *Order*.
- Commerce limited examination to two mandatory respondents and declined to select any voluntary respondents; when one of two mandatory respondents receives total AFA, the separate rate respondents are penalized by inclusion of the AFA rate.
- In *Changzhou Hawd CIT 2018*, the Court ruled that Commerce must exclude from the order all companies that requested voluntary-respondent treatment, not only the companies that supplied voluntary questionnaire responses.¹⁹⁵
- Given that Commerce limited respondent selection and refusal to accept any voluntary respondents, Commerce cannot presume unfair trading for such companies and must assign them a zero margin and exclude them from the *Order*.

Commerce's Position:

We disagree with the SRA Plaintiffs that certain companies that requested voluntary respondent status should be excluded from the *Order*. We explained why we could not select any voluntary respondents in the LTFV investigation.¹⁹⁶ Instead, each of the companies that requested voluntary respondent treatment was assigned the rate assigned to all other exporters

¹⁹⁴ See SRA Plaintiff's Draft Comments at 10-13.

¹⁹⁵ *Id.* at 11-12 (Citing to *Changzhou Hawd Flooring Co. v. United States*, 324 F. Supp. 3d 1317, 1326-1328 (CIT 2018) (*Changzhou Hawd CIT 2018*); *aff'd*, *Changzhou Hawd Flooring Co. v. United States*, 947 F.3d 781, 794 (Fed. Cir. 2020) (*Changzhou Hawd CAFC 2020*) (finding "no reversible error in the Trade Court's conclusion that Commerce did not provide an adequate justification for including the voluntary-review firms in the antidumping duty order in this case.")).

¹⁹⁶ See Memorandum, "Antidumping Duty Investigation of Certain Hardwood Plywood from the People's Republic of China: Selection of Voluntary Respondent," dated April 4, 2017.

that demonstrated eligibility for a separate rate.¹⁹⁷ Because the separate rate calculated for these final results of redetermination is not zero, the question of whether some separate rate companies should be excluded from the *Order* is moot.

IV. FINAL RESULTS OF REDETERMINATION

Pursuant to the CIT's *Remand Order II*, Commerce has reconsidered, under respectful protest, its decision to reject certain new factual information presented by Chengen at verification, and to apply the intermediate input methodology to Chengen and has, in these final results of redetermination, recalculated Chengen's estimated weighted-average dumping margin by calculating Chengen's NV based on Chengen's log FOPs. Consequently, on remand, we calculated an estimated weighted-average dumping margin for Chengen (and its affiliated supplier Dongfangjuxin) of 0.00 percent, and we will exclude Chengen from the *Order* if this litigation concludes with a final judgement that reflect these results.¹⁹⁸

In addition, we revised the estimated dumping margin determined for the China-wide entity to 114.72 percent, and we recalculated the estimated dumping margin for the non-examined, separate rate companies that are party to this litigation to 57.36 percent, which is the

¹⁹⁷ See *Final Determination*, 82 FR at 53462-69.

¹⁹⁸ As noted above, this exclusion applies only to merchandise produced by Linyi Dongfangjuxin Wood Co., Ltd., and exported by Linyi Chengen Import and Export Co., Ltd.

simple average of the rates calculated for Chengen and the China-wide entity, consistent with the Act.

6/18/2020

X 

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

Attachment