

UNITED STATES COURT OF INTERNATIONAL TRADE

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CELTIC CO., LTD., ET AL.		)	
		)	
	Plaintiffs,	)	
v.		)	Ct. No. 18-00011
		)	
UNITED STATES,		)	
	Defendant.	)	
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**COMPLAINT**

Plaintiffs, Celtic Co., Ltd., Anhui Hoda Wood Co., Ltd., Far East American, Inc., Jiaxing Gsun Import and Export Co., Ltd., Jiaxing Hengtong Wood Co., Ltd., Linyi Evergreen Wood Co., Ltd., Linyi Glary Plywood Co., Ltd., Linyi Jiahe Wood Industry Co., Ltd., Linyi Linhai Wood Co., Ltd., Linyi Hengsheng Wood Industry Co., Ltd., Linyi Huasheng Yongbin Wood Co., Ltd., Linyi Mingzhu Wood Co., Ltd., Linyi Sanfortune Wood Co., Ltd., Qingdao Good Faith Import and Export Co., Ltd., Shanghai Futuwood Trading Co., Ltd., Shandong Qishan International Trading Co., Ltd., Suining Pengxiang Wood Co., Ltd., Suqian Hopeway International Trade Co., Ltd., Suzhou Oriental Dragon Import and Export Co., Ltd., Xuzhou Andefu wood Co., Ltd., Xuzhou Jiangyang Wood Industries Co., Ltd., Xuzhou Longyuan Wood Industry Co., Ltd., Xuzhou Pinlin International Trade Co., Ltd., Xuzhou Shengping Import and Export Co., Ltd., and Xuzhou Timber International Trade Co., Ltd., by and through its counsel, allege as follows:

**Parties**

1. Plaintiffs consist of one United States importer, Far East American, Inc. (“Far East

American”), and a group of Chinese producers and exporters (“Separate Rate Applicants”) that imported and/or manufactured and exported subject “hardwood plywood” during the period of investigation. The Separate Rate Applicants are Chinese producers and exporters that are privately held companies organized under the laws of the People’s Republic of China (“China”). All Separate Rate Applicants filed separate rate applications on time, and were each assigned the cooperating party “separate” rate at the conclusion of the investigation. Far East American is a California corporation that participated fully in the investigation and imported from several of the above Separate Rate Applicants.

2. Defendant is the United States of America acting by and through the U.S. Department of Commerce (the “Department”).

#### **Jurisdiction**

3. This action is brought pursuant to 19 U.S.C. § 1516a(a)(2)(A)(i)(II) and (B)(i) to contest the final determination by the Department under 19 U.S.C. §1673d, in the antidumping duty investigation of Certain Hardwood Plywood Products from China. *See 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 Fed. Reg. 505 (January 4, 2018) (“Final Determination”).
4. Accordingly, this Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2).

#### **Standing**

5. Plaintiffs are foreign exporters and a domestic importer of subject hardwood plywood that

participated in the investigation resulting in the contested determination. Accordingly, they each qualify as an interested party within the meaning of 19 U.S.C. §§ 1516a(f)(3) and 1677(9)(A).

6. In addition, because the Department made a final determination that was not lawful, or otherwise overstated their antidumping duty margin, they have been adversely affected or aggrieved by agency action within the meaning of Section 702 of Title 5 of the United States Code. Therefore, Plaintiffs have standing to bring this action under 28 U.S.C. § 2631(c).

#### **Timeliness**

7. Notice of the antidumping duty order resulting from the contested determination was published in the *Federal Register* on January 4, 2018. Plaintiffs filed a summons instituting this action on February 2, 2018, serving notice of the action upon all other participants in the investigation on the same date. Furthermore, Plaintiffs are filing this complaint on the same day as filing the aforementioned summons. Therefore, Plaintiffs have commenced this action within the time limits specified in 19 U.S.C. § 1516a(a)(2)(A), 28 U.S.C. § 2636(c) and Rule 3 and Rule 6 of the Rules of this Court.

#### **Statement of Facts**

8. The petition in this case was filed November 18, 2016. The Department initiated its investigation the following month. *See Certain Hardwood Plywood Products from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 81 Fed. Reg. 91125 (Dec. 16, 2016).

9. The Department ultimately selected two mandatory respondents in the investigation: Linyi Chengen Import and Export Co., Ltd (“Linyi Chengen”) and Shandong Dongfang Bayley Wood Co., Ltd. (“Bayley Wood”). Linyi Chengen was assigned a de minimis antidumping duty margin of less than 2% in the Preliminary Determination. *See Certain Hardwood Plywood Products from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value; and Preliminary Affirmative Determination of Critical Circumstances, In Part*, 82 Fed. Reg. 28629, 28630 (June 23, 2017) (“Preliminary Determination”). The Department assigned Bayley Wood total adverse facts early on in the investigation and in the preliminary determination, where it included Bayley in the PRC Entity Rate of 114.72%. *See id.*, 28636 n 9. The Separate Rate preliminarily was assigned at 56.36%, i.e., the average of the two rates for the mandatory respondents. *Id.*
10. According to the Preliminary Determination Decision Memorandum, in a short paragraph, the Department explained that it was relying on its normal methodologies (i.e., accepting and valuing the inputs as purchased and consumed by the respondent and not relying on the so-called intermediate methodology, which is a rare exception to the normal methodology whereby the Department disregards the first input to production and values instead the respondent’s semi-finished input). *See Preliminary Decision Memorandum at 16-17.*
11. The Department made major changes to all of the rates in the Final Determination. The most significant of these was that the Department accepted petitioners’ argument to rely upon the intermediate methodology. This single decision, which resulted in the surrogate

valuation of the intermediate input veneers instead of the primary log input, more or less resulted in the spiking of the margin from steeply negative in the Preliminary Determination to 183.36% for the Final Determination. *See Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value; and Final Affirmative Determination of Critical Circumstances*, In Part, 82 Fed. Reg. 53460, 53462 (Nov.16, 2017) ("Final Determination"). As this rate was now above de minimis, the Separate Rate was calculated the traditional way, based on the rate of the sole mandatory respondent whose rate was not entirely based on adverse facts or de minimis, at 183.36%. Bayley Wood's rate continued to be based upon total adverse facts and was set at 183.36% as well because it was now the highest rate of record. *Id.* at 53469 & n 18.

12. The Department made unreasonable and arbitrary decisions with respect to the facts allowed in the parties' case briefs and/or at verification. Up until the case briefs were filed at the very end of pleadings in this year-long investigation, petitioners' basis for suggesting the intermediate methodology was that Chengen allegedly undercounted its log consumption by not accounting for the bark around the log. Petitioners repeatedly asked the Department in comments to scrutinize this point, including in their pre-verification comments. Chengen proved definitively that international measurement standards for logs are "inside the bark". Chengen offered the Chinese National Standard to establish that logs are measured inside the bark at verification, which the verifiers took, in part, in an exhibit. Chengen also offered the national standard of Romania, which was the surrogate country selected previously in the Preliminary Determination and later in

the Final Determination. The lead verifier declined to accept or review this publicly available document at verification. In petitioners' case brief, instead of complaining about the uncounted bark waste that was not in the purchase or measurement standards, and for the first time ever in the investigation, they suggested that Chengen undercounted log volume because diameter measurements were only taken at the small end of the log, i.e., at the top rather than the base of the log.

13. Having allowed this brand new factual allegation (which became the basis for Department's Final Determination) despite never raising a concern about this previously or at the onsite verification of the lumber yard of Chengen, the Department rejected a series of facts submitted by Chengen in its rebuttal brief and ministerial error comments to rebut petitioners' new fact allegation. *See* Chengen Verification Report (September 28, 2018); Dep't Rejection Letter (October 20, 2017); Dep't Rejection Letter (November 27, 2017). The Department's decisions were unreasonable and arbitrary. Chief among Chengen's facts that were stricken were (1) the mathematical formula to measure the volume of a cylinder; (2) calculations from the volume conversion tables used by Chengen and verified by the Department that demonstrate that all input volumes per log were in excess of the volume of a cylinder calculated from the thin/top end of the logs; (3) and additional international and U.S. standards demonstrating that all measurements are taken inside the bark and most measurements are taken from the thin end and fed into a complex algorithm to account for the curvature of a log, as was the Chinese National standard relied upon by Chengen for the basis of its log "material-in" records.
14. In the Final Determination, the Department also drew conclusions that were inconsistent

with the verification about key facts underlying its decision that Chengen's log input volumes were unreasonable. For instance, the Department cited the fact that Chengen's plant manager only spot checked the diameters of the delivered logs without reference to its own verification report, which indicates that the senior verifier spot checked the logs on his own in a large pile of logs at random and found no discrepancies. IDM at 24.

15. Similarly, the Department also noted in its final determination that because the farmers did not issue invoices with the log deliveries, the Department could not cross-check Chengen's reported and verified poplar log consumption with a third-party source. *Id.* at 24-25. The verification report and Final Determination fail to mention that the farmers provided delivery lists of the logs and volume, which were then taken by the farmers to the main Chengen Accounting office for the preparation of an invoice and payment. Chengen explained that the farmers did not have legal status to prepare VAT invoices, which is what required the involvement of its accounting office. All of this was verified and subject to inspection but not deeply investigated by the verifiers, who perhaps realized that the actual prices of the purchases in a nonmarket case have no relevance in any event due to the use of surrogate values for said purchases.
16. In light of the fact that petitioners' own State log standards include measurement at the top of the log and the application of an algorithm to accurately measure the true volume of the log, and in light of the fact that petitioners knew when they wrote their case brief that Chengen used the Chinese National Standard applying the same methodology and recorded volumes in excess of the volume of a cylinder whose diameter matched the top end of the log, Chengen filed a ministerial error allegation after the final determination.

This allegation pointed out that the Department was clearly misled and that basic math of record proved that Chengen did not merely rely on a volume represented by a volume of a uniform cylinder measured at the top thin end of the log in its records. *See* Chengen Ministerial Error Allegation (Nov. 20, 2017). The Department, apparently unconcerned that it was fundamentally misled by petitioners on the new central fact of the investigation, rejected Chengen's arithmetic and policy points concerning the Department's right to redress inherent misrepresentations as mere post-briefing out of time argument. *See* Dep't Ministerial Error Memorandum (Dec. 8, 2017).

**Count 1**

17. Plaintiffs hereby incorporate, by reference, paragraphs 1 through 16, above.
18. The Department's determination that Chengen's books and records did not adequately capture the volume of its log inputs, and hence its reliance upon the intermediate methodology, was unsupported by substantial evidence on the record. *See* 19 U.S.C. §1516a(b)(1)(B)(i); *see also* Final Determination Decision Memorandum at Cmt. 2. In contrast, the Department actually verified that the top-of-the-log diameter measurements were accurate at a lengthy on-site visit which included the Department's own random spot check of such diameters. The verifiers further verified that the volumes recorded in the inventory and that flowed through all the cost and factor of production reconciliations of the entire company corresponded to the table from the Chinese National Standard that applied the length and top diameter to a complex algorithm to accurately derive the full volume of the log. Finally, the verifiers traced the entire accounting and physical supply process of the log all the way through to the finished merchandise without discrepancy.



**Count 2**

19. Plaintiffs hereby incorporate, by reference, paragraphs 1 through 18, above.
20. The Department's determinations as to what to strike, what to keep, and what facts to outright ignore on the record were unreasonable, unbalanced, and arbitrary. The Department's selective acceptance or rejection of particular new facts, especially with respect to the under-counting of log volumes, was arbitrary and capricious. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (an agency decision would be arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."); *see also SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001) ( It is well-established that "[a]n agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently."). Most fundamentally, the Department accepted Petitioners' new proposed key fact but limited and/or neglected Chengen's attempts to rebut those new facts.

**Count 3**

21. Plaintiffs hereby incorporate, by reference, paragraphs 1 through 20, above.
22. The law states that the record consists of all materials submitted to or considered by the administering authority. *See* 19 U.S.C. § 1516a(b)(2) ("Record for Review" includes a "copy of all information presented to or obtained by the Secretary...."). Accordingly, the Department must confront the information that was submitted and/or that it considered or

its decisions are contrary to law. The Department's final determination is contrary to law in several respects, inter alia, its refusal to recognize that the log volume conversion table it scrutinized in full at verification but only included in excerpt in the verification exhibits was in fact the Chinese National Standard or that the volumes therein were greater than the volume of a cylinder measured by the small diameter and length of the logs.

**Count 4**

23. Plaintiffs hereby incorporate, by reference, paragraphs 1 through 22, above.
24. The Department's intermediate methodology resulted in a surrogate value for veneer inputs that is not supported by substantial evidence. *See* 19 U.S.C. §1677b(c)(1) (requiring the Department to rely upon the "best available information" for the surrogate values); the Court shall hold this unlawful pursuant to 19 U.S.C. §1516a(b)(1)(B)(i). The veneer surrogate value relied upon was less specific than the log surrogate value and less reliable as the veneer import prices were aberrantly more expensive than the price of the finished subject merchandise, i.e., more expensive than fully finished hardwood plywood, imported in the same Romanian market.

**Count 5**

25. Plaintiffs hereby incorporate, by reference, paragraphs 1 through 24, above.
26. The Department unreasonably and arbitrarily assigned Chengen a rate of 183.36%, the highest rate of record, which resulted a rate of 183.36% for all the Separate Rates Applicants. (1) Any adjustment downward of Chengen's AD rate as a result of Chengen's or this appeal should be applied to the Separate Rate Applicants. (2) If Chengen is assigned

upon remand an AD rate of de minimis then the Separate Rate Applicants must also be assigned a rate of de minimis and excluded from the AD order.

**DEMAND FOR JUDGMENT AND PRAYER FOR RELIEF**

WHEREFORE, and as challenged herein, Plaintiffs respectfully request that this

Court:

(1) Declaring the Department's reliance on the intermediate methodology was not supported by substantial evidence on the record, remanding with instructions to use the normal NV methodology; and

(2) Declaring that the Department's manipulation of facts in the case briefs, ministerial error allegations, and final determination to undermine the normal NV methodology were arbitrary and capricious; and

(3) Declaring that the Department's selection of Chengen's veneer surrogate value as the "best available information" is unsupported by substantial evidence;

(4) Remanding to recalculate Chengen's antidumping duty margin; and, if so,

(5) Remanding to recalculate the Separate Rates Applicants' AD rate, including excluding them from the AD order if such rate is de minimis, and

(6) Granting Plaintiffs such other relief as the Court may deem appropriate.

Respectfully submitted,

/s/ Gregory S. Menegaz

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Date: February 2, 2018

**PUBLIC CERTIFICATE OF SERVICE**  
**Hardwood Plywood**  
**from the People's Republic Of China**  
**A-570-051**  
**Investigation**  
**CIT: 18-00011**

I, hereby certify that a copy of the Complaint was served upon the following parties by Certified and Return Receipt Mail or FedEx on February 2, 2018:

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