

UNITED STATES COURT OF INTERNATIONAL TRADE

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Linyi Chengen Import and Export Co., Ltd)	
)	
	Plaintiff,)	
v.)	Ct. No. 18-00002
)	
United States)	
)	
	Defendant.)	
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COMPLAINT

On behalf of Linyi Chengen Import and Export Co., Ltd (“Linyi Chengen”), we hereby bring this civil action and allege the following:

Parties

1. Plaintiff is a Chinese exporter, Linyi Chengen Import and Export Co., Ltd. (“Linyi Chengen”).
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

3. Plaintiff Linyi Chengen is a foreign exporter of the subject hardwood plywood. Accordingly, plaintiff qualifies as an interested party within the meaning of 19 U.S.C. §§ 1516a(f)(3) and 1677(9)(A).
4. In addition, because the Department made a Final Determination that was not lawful, or, otherwise overstated Plaintiff's antidumping duty margin, Plaintiff has been adversely affected or aggrieved by agency action within the meaning of Section 702 of Title 5 of the United States Code. Therefore, Plaintiff has standing to bring this action under 28 U.S.C. § 2631(c).

Timeliness

5. Notice of the antidumping duty order was published in the *Federal Register* on January 4, 2018. Plaintiff filed a summons instituting this action on January 8, 2018, within thirty days after publication of the aforementioned antidumping duty order, serving notice of the action upon all other participants in the investigation on the same date. Furthermore, Plaintiff is filing this complaint within thirty days after filing the aforementioned summons. Therefore, Plaintiff has 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

6. 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).
7. In this investigation, the Department selected two mandatory respondents based upon quantity and value questionnaire responses of cooperating exporters: (1) Shandong Dongfang Bayley Wood Co., Ltd. (“Bayley Wood”) and another company. *See* Dep’t Respondent Selection Memo (Jan. 9, 2017). The latter immediately filed a correction to their quantity and value questionnaire and Linyi Chengen was then selected in their place as a mandatory respondent. *See* Dep’t Respondent De-Selection and Replacement Memo (Jan. 13, 2017).
8. Linyi Chengen was assigned a de minimis antidumping duty margin of less than 2% in the Preliminary Determination, based on the selection of Romania as the surrogate country (consistent with recent reviews of *MLWF from China*) and on the Department’s *normal* normal value (“NV”) calculation methodology for nonmarket countries such as China (which the Department continues to so designate despite China’s WTO accession protocol that China interprets to have required graduation to market economy status by the end of 2016). Linyi Chengen does not dispute China’s status as a nonmarket economy in this appeal. *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% at the average of the two rates for the mandatory respondents. *Id.*

9. 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.*
10. 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 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.

11. There were several other highly unusual aspects to this investigation. The Department, for the first time in memory without the excuse of a federal government shut down, failed to release its decisions for seven days after the statutory maximum. The decision was due on November 6, 2017 but was only released on November 13, 2017.
12. Furthermore, 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, *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 Results) despite never raising a concern about this 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 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 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. Plaintiff hereby incorporates, 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. Plaintiff hereby incorporates, 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.").

Count 3

21. Plaintiff hereby incorporates, 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. Plaintiff hereby incorporates, 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.*, fully finished hardwood plywood, imported in the same Romanian market.

DEMAND FOR JUDGMENT AND PRAYER FOR RELIEF

WHEREFORE, and as challenged herein, Plaintiff respectfully requests judgment from the 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 in light of the above, and

(5) Granting Plaintiff such other relief as the Court may deem appropriate.

Respectfully submitted,

/s/ Gregory S. Menegaz

Gregory S. Menegaz
Alexandra H. Salzman
deKieffer & Horgan, PLLC
1090 Vermont Ave., N.W.
Suite 410
Washington, D.C. 20005
Tel: (202) 783-6900
email: gmenegaz@dhlaw.com
Counsel for Plaintiff

Date: January 19, 2018

PUBLIC CERTIFICATE OF SERVICE
Hardwood Plywood
from the People's Republic Of China
A-570-051
Investigation
CIT: 18-00002

I, hereby certify that a copy of the complaint was served upon the following parties by Certified and Return Receipt Mail or FedEx on January 19, 2018:

Certified and Return Receipt Mail or
FedEx

Timothy C. Brightbill, Esq.
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

Jeffrey S. Grimson, Esq.
Mowry & Grimson, PLLC
5335 Wisconsin Ave.
Suite 810
Washington, DC 20015

Linda M. Weinberg, Esq.
Barnes & Thornburg LLP
1717 Pennsylvania Avenue, NW
Suite 500
Washington, DC 20006-4623

Jeffrey S. Neeley, Esq.
Husch Blackwell
750 17th Street, NW
Suite 900
Washington, DC 20006

Francis J. Sailer, Esq.
**Grunfeld Desiderio Lebowitz Silverman &
Klestadt LLP**
1201 New York Avenue, NW
Suite 650
Washington, DC 20005

Lizabeth R. Levinson, Esq.
Kutak Rock LLP
1625 Eye Street, NW
Suite 800
Washington, DC 20036-4374

Daniel L. Porter, Esq.
Curtis, Mallet-Prevost, Colt & Mosle LLP
1717 Pennsylvania Avenue, NW
Washington, DC 20006

Brady W. Mills, Esq.
Morris, Manning & Martin, LLP
1401 I Street, NW
Suite 600
Washington, DC 20005

Joel R. Junker, Esq.
Junker & Nakachi, P.C.
1191 Second Avenue
Suite 1800
Seattle, WA 98101

Nithya Nagarajan, Esq.
Law Offices of Nithya Nagarajan, LLC
9101 Friars Road
Bethesda, MD 20817

David J. Craven, Esq.
Sandler, Travis & Rosenberg, P.A.
225 West Washington Street
Suite 1640
Chicago, IL 60606

Jon L. Christensen
Appo-G, LLC
625 Bakers Bridge Road
Suite 105
Franklin, TN 37067

/s/ Betsy Baber
Betsy Baber