

UNITED STATES COURT OF INTERNATIONAL TRADE

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BEIJING TIANHAI INDUSTRY CO., LTD.,	:	
	:	
Plaintiff,	:	
v.	:	Court No. 12-00203
	:	
UNITED STATES,	:	
	:	
Defendant.	:	
	x	

COMPLAINT

Plaintiff, Beijing Tianhai Industry Co., Ltd. (“BTIC”), by and through undersigned counsel, hereby alleges and states as follows:

ADMINISTRATIVE DECISION TO BE REVIEWED

1. Plaintiff seeks review of the final determination of the U.S. Department of Commerce, International Trade Administration (“the Department”), in the antidumping duty investigation of high pressure steel cylinders (“HPSC”) from the People’s Republic of China. The final determination was published as High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 Fed. Reg. 26,739 (May 7, 2012) (“Final Determination”), and the antidumping duty order was published as High Pressure Steel Cylinders From the People's Republic of China: Antidumping Duty Order, 77 Fed. Reg. 37,377 (June 21, 2012). The Department’s findings and decisions for the Final Determination were detailed in the Department’s “Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of High Pressure Steel Cylinders from the People’s Republic of China” (April 30, 2012).

JURISDICTION

2. This action is filed pursuant to 19 U.S.C. §§1516a(a)(2)(A)(i)(II) and 1516a(a)(2)(B)(i). The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(c).

STANDING OF PLAINTIFF

3. Plaintiff is a producer and exporter of HPSCs from China. Plaintiff is subject to the Department's Final Determination and participated as a mandatory respondent in the Department's investigation that resulted in the challenged determination. Therefore, Plaintiff is an interested party as described in section 771(9)(A) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1677(9)(A), and, accordingly, has standing to bring this action under 28 U.S.C. § 2631(c) and 19 U.S.C. § 1516a(d).

TIMELINESS OF THE ACTION

4. Section 516A(a)(2)(A)(i)(II) of the Act requires that, in actions challenging the Department's determinations pursuant to section 516A(a)(2)(B)(i) regarding antidumping duty investigations, the summons must be filed within 30 days of the date of the publication of the antidumping duty order in the Federal Register. 19 U.S.C. § 1516a(a)(2)(A)(i). The Department published the antidumping duty order on HPSC from China on June 21, 2012.

5. This action was commenced within 30 days of the date of publication of the antidumping duty order by the filing of a Summons on July 20, 2012. This Complaint is being filed within the time allowed for the filing of a complaint under the law and this Court's Rules. The Summons and the Complaint have been timely filed in accordance with 19 U.S.C. § 1516a(a)(2)(A), 28 U.S.C. § 2636(c), and pursuant to Rules 3(a)(2) and 6(a) of the Rules of the Court of International Trade.

BACKGROUND

6. On May 11, 2011, the U.S. HPSC industry, represented solely by Norris Cylinder Company (“Petitioner”), filed a petition with U.S. Department of Commerce and the U.S. International Trade Commission claiming that the Chinese HPSC industry was making sales to the United States at less than fair value.
7. On June 8, 2011, based on the allegations in the petition, the Department initiated an antidumping duty investigation on HPSC from China. See High Pressure Steel Cylinders From the People's Republic of China; Initiation of Antidumping Duty Investigation, 76 Fed. Reg. 33,213 (June 8, 2011).
8. On August 25, 2011, BTIC was selected as the sole mandatory respondent in the investigation, and BTIC cooperated fully with the Department thereafter.
9. On December 15, 2011, the Department published its Preliminary Affirmative Antidumping Duty Determination finding that BTIC made sales at less than fair value during the period of investigation at a margin of 5.08%. See High Pressure Steel Cylinders From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 76 Fed. Reg. 77,964 (Dec. 15, 2011) (“Preliminary Determination”).
10. In January and February 2012, the Department conducted an onsite verification of the questionnaire responses submitted by BTIC at the company’s Chinese and U.S. locations. The Department issued its reports on these verifications on February 23, 2012.
11. On March 6, 2012, BTIC submitted a case brief with the Department presenting several arguments for the Department to consider in its Final Determination.

12. On May 7, 2012, the Department published its Final Determination in this investigation revising BTIC's antidumping duty margin to 6.62%. High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 Fed. Reg. 26,739 (May 7, 2012).

13. On June 21, 2012, the Department published its antidumping duty order. See High Pressure Steel Cylinders From the People's Republic of China: Antidumping Duty Order, 77 Fed. Reg. 37,377 (June 21, 2012).

STATEMENT OF CLAIMS

COUNT ONE

14. Paragraphs 1 to 13 are adopted and incorporated herein by reference.

15. The Department's refusal to account for the double counting of remedies against BTIC in its application of U.S. CVD law to China while considering the country a non-market economy for antidumping purposes, pursuant to Application of Countervailing Duty Provisions to Nonmarket Economy Countries, Pub. L. No. 112-99, 126 Stat. 265 (Mar. 13, 2012) (to be codified at 19 U.S.C. §§ 1671, 1677f-1), is unconstitutional.

16. The new law violates equal protection of the law as guaranteed by the Fifth Amendment's due process clause. Section 1(b) of Pub. L. No. 112-99 establishes a special rule that creates a particular class of parties to whom both antidumping and countervailing duties may be retroactively imposed without the protections Congress recognized as necessary under Section 2 of the same Act to account for potential double counting, protections that only apply prospectively.

COUNT TWO

17. Paragraphs 1 to 13 are adopted and incorporated herein by reference.

18. In its Final Determination, the Department made a finding of “targeted dumping” pursuant to 19 U.S.C. § 1677f-1(d)(B). On the basis of this finding, the Department applied an average-to-transaction sales comparison methodology for all of BTIC’s reported U.S. sales and applied zeroing to all transaction-specific negative dumping margins found for BTIC.

19. The Department’s finding of targeted dumping for BTIC, and its decision to apply an average-to-transaction sales comparison methodology for all of BTIC’s reported U.S. sales and to apply zeroing to all transaction-specific negative dumping margins found for BTIC, are unsupported by substantial record evidence and are otherwise contrary to law.

COUNT THREE

20. Paragraphs 1 to 13 are adopted and incorporated herein by reference.

21. In its Final Determination, the Department calculated surrogate financial ratios for BTIC using the financial statement of Thai Metal Drum Manufacturing Public Co., Ltd. (“Metal Drum”), notwithstanding the fact that Metal Drum manufactured welded metal containers rather than seamless cylinders for high pressure gas storage.

22. The Department’s decision to calculate surrogate financial ratios for BTIC using the financial statement of Metal Drum is unsupported by substantial record evidence and otherwise contrary to law.

COUNT FOUR

- 23. Paragraphs 1 to 13 are adopted and incorporated herein by reference.
- 24. Upon information and belief, the Department erred in other aspects of its Final Determination that will be evident upon review of the Department's record in this case.
- 25. These other errors by the Department are unsupported by substantial record evidence and are otherwise contrary to law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- (a) hold that the Department's Final Determination is unsupported by substantial evidence and otherwise not in accordance with law;
- (b) remand the Final Determination with instructions to issue a new determination that is consistent with the Court's decision; and
- (c) provide such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Mark E. Pardo _____

Bruce M. Mitchell

Mark E. Pardo

Andrew T. Schutz

GRUNFELD, DESIDERIO, LEBOWITZ
SILVERMAN & KLESTADT LLP

1201 New York Ave., NW
Ste. 650
Washington, DC 20005
(202) 783-6881

Dated: August 20, 2012

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2012, I have caused service of the BTIC's Complaint in Court No. 12-203, via certified mail, return receipt requested, upon the following parties:

Mark Lunn, Esq.
Arent Fox LLP
1050 Connecticut Avenue, NW
Suite 400
Washington, DC 20036-5339

Edward M. Lebow, Esq.
Haynes and Boone, LLP
1615 L Street, NW
Washington, DC 20036-5610

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

Ji Jiachang
Shanghai J.S.X. International Trading Corporation
3F, No. 1010, Zhou Jiazui Road, Shanghai, China

GRUNFELD, DESIDERIO, LEBOWITZ,
SILVERMAN & KLESTADT LLP

/s/ Andrew T. Schutz

Dated: August 20, 2012
Washington D.C.