Slip Op. 21-69

UNITED STATES COURT OF INTERNATIONAL TRADE

FINE FURNITURE (SHANGHAI) LIMITED, et al.,

Plaintiffs,

and

LUMBER LIQUIDATORS SERVICES, LLC, et al.,

Plaintiff-Intervenors,

v.

UNITED STATES,

Defendant,

and

COALITION FOR AMERICAN HARDWOOD PARITY,

Defendant-Intervenor.

Before: Timothy C. Stanceu, Judge

Consolidated Court No. 14-00135

OPINION AND ORDER

[Ordering agency determination of an antidumping duty rate for certain respondents and denying defendant's motion to dismiss two parties from this consolidated case.]

Dated: June 2, 2021

Sarah M. Wyss, Mowry & Grimson, PLLC, of Washington, D.C., for plaintiff Fine Furniture (Shanghai) Limited. With her on the brief was *Kristin H. Mowry*.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Gregory S. Menegaz, deKieffer & Horgan, PLLC, of Washington, D.C., for plaintiffs Dunhua City Jisen Wood Industry Co., Ltd., et al.

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Ronald M. Wisla, Fox Rothschild LLP, of Washington, D.C., for plaintiffs Baishan Huafeng Wood Product Co., Ltd., et al. With him on the brief was *Lizbeth R. Levinson*.

Mark R. Ludwikowski, Clark Hill PLC, of Washington, D.C., for plaintiff-intervenor Lumber Liquidators Services, LLC.

Tara K. Hogan, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for defendant. With her on the brief were *Bryan M. Boynton*, Acting Assistant Attorney General, and *Jeanne E. Davidson*, Director.

Timothy C. Brightbill, Wiley Rein LLP, of Washington, D.C., for defendant-intervenor Coalition for American Hardwood Parity. With him on the brief were *Stephanie M. Bell* and *Tessa V. Capoleto*.

Stanceu, Judge: Plaintiff Fine Furniture (Shanghai) Limited ("Fine Furniture") and a number of other Chinese producers or exporters of multilayered wood flooring brought actions, now consolidated, contesting a final, published determination by the International Trade Administration, U.S. Department of Commerce ("Commerce" or the "Department"). Commerce issued that determination to conclude the first periodic administrative review of an antidumping duty order on imports of certain multilayered wood flooring from the People's Republic of China (the "PRC" or "China").

Pursuant to a joint motion of plaintiffs, plaintiff-intervenors, defendant, and defendant-intervenor, the court orders Commerce to conduct certain administrative

proceedings, as discussed herein, necessitated by developments since the issuance of the court's most recent opinion in this litigation. The court denies defendant's motion to dismiss two plaintiffs, Fine Furniture and Dunhua City Jisen Wood Industry Co., Ltd. ("Dunhua Jisen") from this case.

I. BACKGROUND

The background of this action is set forth in the court's prior opinions, which the court summarizes and supplements herein. *See Fine Furniture (Shanghai) Ltd. v. United States*, 40 CIT __, 182 F. Supp. 3d 1350 (2016) ("*Fine Furniture I*"); *Fine Furniture (Shanghai) Ltd. v. United States*, 41 CIT __, 2017 WL 2928783 (July 7, 2017) ("*Fine Furniture II*"); *Fine Furniture (Shanghai) Ltd. v. United States*, 42 CIT __, 321 F. Supp. 3d 1282 (2018) ("*Fine Furniture III*").

A. The Contested Determination

Commerce published the contested determination (the "Amended Final Results") as *Multilayered Wood Flooring from the People's Republic of China: Amended Final Results of the Antidumping Duty Administrative Review; 2011–2012*, 79 Fed. Reg. 35,314 (Int'l Trade Admin. June 20, 2014) ("*Amended Final Results*").

B. The Order and the First Administrative Review

Commerce issued an antidumping duty order on certain multilayered wood flooring from the PRC (the "Order") in late 2011. *Multilayered Wood Flooring From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and*

Antidumping Duty Order, 76 Fed. Reg. 76,690 (Int'l Trade Admin. Dec. 8, 2011) ("*Order*"). In the antidumping duty investigation resulting in the Order, Commerce identified three respondents (the "mandatory" respondents) for individual investigation. These were Zhejiang Yuhua Timber Co., Ltd. ("Yuhua"), Zhejiang Layo Wood Industry Co., Ltd. ("Layo Wood"), and the Samling Group ("Samling"). *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 Fed. Reg. 64,318, 64,318 (Int'l Trade Admin. Oct. 18, 2011) ("*Final Determination*"). Commerce assigned estimated dumping margins of zero to Yuhua, 3.97% to Layo Wood, and 2.63% to Samling. *Order*, 76 Fed. Reg. at 76,692. Commerce assigned the uninvestigated "separate rate" respondents, a group that included Fine Furniture and Dunhua Jisen, an estimated rate of 3.30%—the average of the margins assigned to Layo Wood and Samling. *Id.* at 76,691–92. The "separate rate" respondents were Chinese producers or exporters of the subject merchandise that Commerce found to have established independence from the PRC government but did not select for individual investigation. *Final Determination*, 76 Fed. Reg. at 64,322.

In January 2013, Commerce initiated the first periodic administrative review of the Order, covering the period of May 26, 2011 through November 30, 2012 (the "period of review" or "POR"). *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 Fed. Reg. 6,291 (Int'l Trade Admin. Jan. 30, 2013). Fine Furniture, a Chinese producer and exporter of multilayered wood flooring,

was one of three "mandatory" respondents Commerce selected in the first administrative review for individual examination. *See Amended Final Results*, 79 Fed. Reg. at 35,315. The other two mandatory respondents in the first review were Armstrong Wood Products (Kunshan) Co., Ltd. ("Armstrong") and Nanjing Minglin Wooden Industry Co., Ltd. ("Minglin"), who are not parties to this case. *See id*. at 35,317.

In the Amended Final Results, Commerce assigned Fine Furniture an individual weighted average dumping margin of 5.92% and assigned individual *de minimis* margins to Armstrong and Minglin. *Id.* at 35,316. Noting that Fine Furniture was the only respondent assigned an individual weighted average dumping margin that was not *de minimis*, Commerce assigned a rate of 5.92% to 69 unexamined separate rate respondents. *Id.* at 35,315. These respondents were Chinese producers or exporters of the subject merchandise that Commerce found to have established independence from the PRC government but did not select for individual examination in the first review. *See id.* at 35,317.

C. The Parties to this Consolidated Case

Fine Furniture and the "Separate Rate Plaintiffs," who are 42 of the 69 Chinese producers or exporters of multilayered wood flooring that were unexamined separate rate respondents in the first review, are the plaintiffs and plaintiff-intervenors in this action. Dunhua Jisen is among the Separate Rate Plaintiffs. The Coalition for American

Hardwood Parity (the "Coalition"), the petitioner in the antidumping duty investigation, is the defendant-intervenor.

D. Proceedings before the Court

In *Fine Furniture I*, the court held unlawful the calculation of a deduction Commerce made for Chinese irrecoverable value-added tax ("VAT") when determining a constructed export price for Fine Furniture's subject merchandise. *Fine Furniture I*, 40 CIT at __, 182 F. Supp. 3d at 1371. Also, the court disallowed two decisions Commerce made in determining the normal value of Fine Furniture's subject merchandise, which were the Department's choice of financial statements for use in calculating surrogate financial ratios and its calculation of a surrogate value for Fine Furniture's use of electricity. *Id*.

After defendant requested clarification pertaining to the order the court issued in *Fine Furniture I*, the court issued an opinion stating that Commerce must reconsider its decision on the financial statements that were most appropriate for use in calculating Fine Furniture's financial ratios. *Fine Furniture II*, 41 CIT at __, 2017 WL 2928783 at *3.

Commerce filed the first remand redetermination on August 28, 2017, which included a redetermined weighted average dumping margin of 0.73% for Fine Furniture. *Fine Furniture III*, 42 CIT at __, 321 F. Supp. 3d at 1286. Based on this margin, Commerce assigned a rate of 0.73% to the separate rate respondents involved in the litigation, i.e., the Separate Rate Plaintiffs. *Id.* The court sustained the Department's

recalculation of the deduction for VAT and its decisions on the choice of financial statements for use in determining Fine Furniture's surrogate financial ratios. 42 CIT at __, 321 F. Supp. 3d at 1287–92. The court ordered Commerce to reconsider on remand its selection of the surrogate value for Fine Furniture's electricity usage, reasoning that the record did not contain substantial evidence to support a finding that the rates Commerce selected were the best available information on the record for this purpose. 42 CIT at __, 321 F. Supp. 3d at 1293–97. As a result, the court did not sustain the weighted average dumping margin of 0.73% Commerce determined for Fine Furniture and the equivalent rate Commerce assigned to the Separate Rate Plaintiffs.

Following issuance of the court's opinion and order in *Fine Furniture III*, Commerce requested an extension of time to file its second remand redetermination. Def.'s Consent Mot. for an Extension of Time to File Remand Redeterm. (Aug. 2, 2018), ECF No. 353. Subsequently, Fine Furniture filed a consent motion for an order staying this case pending the final disposition of an appeal of the judgment of this Court in *Changzhou Hawd Flooring Co., Ltd. v. United States*, 42 CIT __, 324 F. Supp. 3d 1317 (2018). Pl. Fine Furniture (Shanghai) Limited's Consent Mot. to Stay (Mar. 11, 2019), ECF No. 361. The court granted this motion and stayed the action according to the terms of the consent motion. Order (Mar. 19, 2019), ECF No. 362.

The *Changzhou Hawd* litigation related to the antidumping duty investigation culminating in the issuance of the Order. Plaintiffs in that litigation, including Fine

Furniture and Dunhua Jisen, who had requested status as voluntary respondents in the investigation from Commerce but were denied, claimed they should have been excluded from the Order as were the mandatory respondents that received a *de minimis* estimated weighted average dumping margin.[1] *Changzhou Hawd Flooring Co., Ltd.*,

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[1] As mentioned, Commerce assigned Zhejiang Layo Wood Industry Co., Ltd. ("Layo Wood") and the Samling Group ("Samling"), two of the three mandatory respondents in the investigation, estimated dumping duty margins of 3.97% and 2.63%, respectively, as a result of the investigation. *Multilayered Wood Flooring From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 76 Fed. Reg. 76,690, 76,691–92 (Int'l Trade Admin. Dec. 8, 2011) ("*Order*"). Layo Wood and Samling appealed the Order to this Court, which directed Commerce to reconsider or explain further its use of certain surrogate values in calculating these estimated margins. *Baroque Timber Indus. (Zhongshan) Co. v. United States*, 37 CIT 1123, 1144, 925 F. Supp. 2d 1332, 1351 (2013). Ultimately, Commerce assigned both respondents estimated margins of zero, which this Court affirmed. *Baroque Timber Indus. (Zhongshan) Co. v. United States*, 38 CIT __, __n.15, 971 F. Supp. 2d 1333, 1338 n.15 (2014). As a result, all three mandatory respondents in the investigation were excluded from the Order. *See Changzhou Hawd Flooring Co., Ltd. v. United States*, 42 CIT __, 324 F. Supp. 3d 1317, 1324–25 (2018). On April 7, 2014, this Court severed *Changzhou Hawd Flooring Co., Ltd.*, Court No. 12-00020, from *Baroque Timber Indus.*, Consol. Court No. 12-00007, following the affirmance of the *de minimis* margins assigned to the two mandatory respondents.

This Court noted in *Changzhou Hawd Flooring Co., Ltd.* that under the Department's prior practice, a determination of *de minimis* margins for all individually-investigated respondents would have terminated the Order. *See id.* at 1325. This Court ruled that the current practice of including a rate for a "PRC-wide entity" in its determinations enabled Commerce to keep the Order in place in the circumstance presented. *Id.* One plaintiff in the case argued that Commerce should have terminated the Order *ab initio*, an argument this Court rejected on the reasoning that the plaintiff "fail[ed] to challenge either the PRC-wide entity policy or the PRC-wide rate." *Id.* As a result, this Court sustained the agency's decision to deny the plaintiff's request that Commerce terminate the Order. *Id*.

42 CIT at __, 324 F. Supp. 3d at 1327. This Court agreed and entered judgment granting the requested relief. *Id.* at 1328. The Court of Appeals for the Federal Circuit ("Court of Appeals") affirmed the judgment. *Changzhou Hawd Flooring Co., Ltd. v. United States*, 947 F.3d 781 (Fed. Cir. 2020).

After the resolution of the *Changzhou Hawd* litigation, Fine Furniture filed an unopposed motion in this action to dissolve the amended preliminary injunction against liquidation of its entries that had been imposed by the court in July 2014. Unopposed Mot. to Dissolve Inj. of Liquidation (July 10, 2020), ECF No. 368. The court granted the motion, lifted the injunction, and ordered liquidation of Fine Furniture's entries of the subject merchandise that was entered or withdrawn from warehouse for consumption during the period of May 26, 2011 through November 30, 2012, excluding the period of November 22, 2011 through December 6, 2011. Order (Sept. 2, 2020), ECF No. 369.

Because the *Changzhou Hawd* litigation resulted in the exclusion from the Order of only those of the separate rate respondents that had requested voluntary respondent status during the investigation culminating in the Order, including Fine Furniture and Dunhua Jisen, the separate rate respondents that did not do so remained subject to the Order.

On February 2, 2021, plaintiffs, plaintiff-intervenors, defendant, and defendant-intervenor submitted a "Joint Status Report" in this action, in which the parties move

for a lifting of the stay. Joint Status Report and Proposed Order (Feb. 2, 2021), ECF No. 372 ("Joint Status Report").[2] In the Joint Status Report, the parties also move for the entry of a court order directing Commerce to recalculate an antidumping duty rate applicable to the separate rate respondents. *Id.* at 3.

Defendant moves in the Joint Status Report for the dismissal of plaintiffs Fine Furniture and Dunhua Jisen as parties to this litigation, arguing that the claims of these two parties are moot now that the Court of Appeals has affirmed a decision of this Court sustaining their exclusion from the Order. *See Changzhou Hawd Flooring Co.*, 947 F.3d at 793–94. Fine Furniture and Dunhua Jisen oppose the motion to dismiss them as parties. Joint Status Report 3; Resp. Correcting Position in Joint Status Report 1–2 (Feb. 12, 2021), ECF No. 373 ("Dunhua Jisen's Response").

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[2] The Joint Status Report was signed by counsels for Intervenor Plaintiffs Baishan Huafeng Wood Product Co., Ltd., *et al.*; Intervenor Plaintiff Lumber Liquidators Services, LLC; Consolidated Plaintiffs Dunhua City Jisen Wood Industry Co., Ltd. ("Dunhua Jisen"), *et al.*; Plaintiff Fine Furniture (Shanghai) Ltd.; Consolidated Plaintiff Dalian Kemian Wood Industry Co., Ltd., *et al.*; Defendant the U.S. Department of Commerce; Intervenor Defendant American Hardwood Parity. Joint Status Report and Proposed Order (Feb. 2, 2021), ECF No. 372. The parties note that "Counsel for Consolidated Plaintiff Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Wood Industry Limited Company of Shanghai did not respond to requests for views or consent. Shanghai Lizhong Wood Products is a separate rate respondent who has not participated in this litigation since 2015." *Id.* at 1.

II. Discussion

A. Jurisdiction and Standard of Review

The court exercises jurisdiction according to 28 U.S.C. § 1581(c), under which the court reviews actions commenced under section 516A of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a, including an action contesting the final results of an administrative review that the Department issues under section 751 of the Tariff Act, 19 U.S.C. § 1675(a).

B. Expiration of the Stay; Rate to Be Applied to the Separate Rate Respondents

The previously-ordered stay is no longer in effect now that the decision of the Court of Appeals in *Changzhou Hawd Flooring Co., Ltd.* has become final. *See* Order (Mar. 19, 2019), ECF No. 362; *see also* CAFC Mandate in Appeal #18-2335 (Mar. 2, 2020), ECF No. 115.

In the Joint Status Report, defendant requested on behalf of Commerce, with the agreement of the parties, that the court issue a "remand to recalculate the separate rate to be assigned to separate rate respondents." Joint Status Report 4. Based on the information provided to the court in the Joint Status Report, the court concludes that it is appropriate for it to issue an order under which Commerce, in a Second Remand Redetermination, will determine an antidumping duty rate to be applied to these respondents. Fine Furniture, whose individual weighted average dumping margin of 0.73% Commerce most recently chose as the basis for its separate rate, is no longer

subject to the Order following the final decision of the Court of Appeals in the *Changzhou Hawd* litigation. Because it has been excluded from the Order, Fine Furniture is no longer an exporter or producer involved in the first periodic administrative review of that Order, the outcome of which remains a matter to be determined by the court. Accordingly, the Department's determination of a 0.73% rate for the Separate Rate Plaintiffs, which the court did not sustain previously, is no longer under consideration by the court, nor is the issue of a surrogate value for Fine Furniture's use of electricity. The court will review the Department's new determination of a separate rate upon the submission of the Department's Second Remand Redetermination. Defendant submits that a period of 40 days for submission of this decision will be sufficient. Joint Status Report 3.

C. Fine Furniture and Dunhua Jisen May Remain as Parties

Defendant moves the court to dismiss Fine Furniture and Dunhua Jisen as parties, arguing that their exclusion from the Order as a result of the *Changzhou Hawd* litigation renders moot their claims in this action. *Id*. Defendant informs the court that Commerce has issued liquidation instructions to U.S. Customs and Border Protection ("CBP") for the entries of Fine Furniture and Dunhua Jisen that were subject to the first review. *Id.*

Fine Furniture and Dunhua Jisen request that they remain parties to this case. *Id.*; Dunhua Jisen's Response 1–2. They assert that neither party has received "the full

relief granted by the *Changzhou Hawd* decision because the entries covered by this appeal have not all yet liquidated and CBP has not yet issued refunds for all the excess deposits made." Joint Status Report 3; Dunhua Jisen's Response 1–2. Both parties state they will seek voluntary dismissal "promptly once all entries covered by this appeal have liquidated without regard to antidumping duties with excess duties refunded." Joint Status Report 3; Dunhua Jisen's Response 1–2.

This Court may "[o]n motion or on its own . . . drop a party." USCIT R. 21. This equitable power is "construed liberally in order to promote complete resolution of disputes, thereby preventing multiple lawsuits." *Sunpower Corp. v. United States*, 39 CIT __, __, 128 F. Supp. 3d 1333, 1340 (2015).

The court denies defendant's motion to dismiss Fine Furniture and Dunhua Jisen as parties in this consolidated action. In order to "promote complete resolution of disputes," USCIT R. 21, the court rules that the two plaintiffs may remain as parties to the case until the court has received notice that each has obtained its full relief, i.e., that all of their respective entries covered by this appeal have been liquidated and all excess duties refunded. These parties will be directed to notify the court when the processes of liquidation and refund have been completed satisfactorily. The court sees no prejudice to defendant or defendant-intervenor that will arise from allowing plaintiffs to remain in this action until that condition has been met, and defendant has not identified any such prejudice.

III. Conclusion and Order

For the reasons discussed above, the court is granting the parties' motion for an order remanding this case to Commerce for the determination of an antidumping duty rate to be applied to the separate rate respondents.

Pursuant to USCIT Rule 21, the court denies defendant's motion to dismiss Fine Furniture and Dunhua Jisen as parties to this action. Therefore, upon review of all papers and proceedings had herein, and upon due deliberation, it is hereby

ORDERED that the parties' joint motion for an order of remand is granted with respect to the determination of an antidumping duty rate to be applied to the separate rate respondents; it is further

ORDERED that defendant's motion to dismiss plaintiffs Fine Furniture and Dunhua Jisen pursuant to USCIT Rule 21 be, and hereby is, denied; it is further

ORDERED that Fine Furniture and Dunhua Jisen each shall file a submission notifying the court upon receiving full relief as a result of the liquidation of their respective entries that are subject to this litigation and the refunding of all excess duties that are owed; it is further

ORDERED that the court's previous order directing Commerce to file a Second Remand Redetermination, as set forth in *Fine Furniture III*, 42 CIT __, 321 F. Supp. 3d 1282 (2018) is hereby amended to read as follows:

It is hereby

ORDERED that Commerce, within forty (40) days of the date of this Opinion and Order, shall issue a new determination upon remand (the "Second Remand Redetermination") that determines an antidumping duty rate to be applied to the separate rate respondents; it is further

ORDERED that any comments of plaintiffs, plaintiff-intervenors, and defendant-intervenor on the Second Remand Redetermination must be filed with the court no later

than thirty (30) days after the filing of the Second Remand Redetermination; and it is further

ORDERED that any response of defendant to the aforementioned comments must be filed no later than fifteen (15) days from the date on which the last comment is filed.

/s/ Timothy C. Stanceu
Timothy C. Stanceu
Judge

Dated: June 2, 2021
New York, New York