

Slip Op. 23-31

UNITED STATES COURT OF INTERNATIONAL TRADE

**PRINTING TEXTILES, LLC, doing
business as BERGER TEXTILES,**

Plaintiff,

v.

UNITED STATES,

Defendant.

Before: Timothy C. Stanceu, Judge

Court No. 23-00056

OPINION

[Dismissing action for lack of subject matter jurisdiction]

Dated: March 10, 2023

Kyl J. Kirby, Attorney and Counselor of Law, P.C., of Fort Worth, Texas, for plaintiff.

Mikki Cottet, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for defendant. Also appearing were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Franklin E. White, Jr.*, Assistant Director.

Stanceu, Judge: Plaintiff commenced this action on March 8, 2023, contesting various decisions of U.S. Customs and Border Protection (“Customs” or “CBP”) following CBP’s denial of two administrative protests filed by plaintiff. Concluding that the Court of International Trade lacks subject matter jurisdiction, the court dismisses this action.

I. BACKGROUND

Plaintiff Printing Textiles, LLC dba Berger Textiles (“Berger”), a company based in Garden Grove, California, states in its complaint that it was the importer on entries of what it describes as “Canvas Banner Matisse coated fabric” that it imported from the People’s Republic of China (“China” or the “PRC”). Compl. 1 (Mar. 8, 2023), ECF No. 2.

A. The Protests and Protest Denials by Customs

Plaintiff states, further, that it filed two administrative protests with Customs pertaining to various of these entries, one on June 16, 2020 (Protest No. 520120101583) and another on March 16, 2022 (Protest No. 270422159803). *Id.* ¶¶ 16, 18. Berger filed Protest No. 520120101583 with an application for further review. *Id.* ¶ 16. Customs denied both protests on September 16, 2022. *Id.* ¶ 19. In denying Protest No. 520120101583, Customs also denied the application for further review. *Id.* ¶ 20.

Plaintiff filed with Customs a request to set aside the denial of the application for further review of Protest No. 520120101583 on November 15, 2022, *id.* ¶ 21, which Customs denied on January 14, 2023, *id.* ¶ 24. On December 15, 2022, Berger requested that Customs void the denials of the protests on the ground that it submitted to the U.S. Department of Commerce (“Commerce”), on that same date, a request for a scope ruling on the issue of whether the Canvas Banner Matisse coated fabric is within the scope of an antidumping duty order, *Notice of Antidumping Duty Order: Certain Artist Canvoas from the People’s Republic of China*, 71 Fed. Reg. 31,154 (Int’l Trade Admin. June 1,

2016) (the “Antidumping Duty Order”). Compl. ¶ 22, 23. Plaintiff asserts that Commerce deemed the scope inquiry initiated on January 23, 2023. *Id.* ¶ 25.

On February 10 and March 3, 2023, plaintiff made further requests to Customs for the voiding of one or both protest denials, and the denial of the request for further review. *Id.* ¶¶ 26, 27.

B. Plaintiff’s Submissions in the Court of International Trade

Plaintiff commenced this action on March 8, 2023 by the filing of a Summons, ECF No. 1, and the Complaint, ECF No. 2. On the same day, plaintiff moved for injunctive relief. Pl.’s Mot. for TRO and Prelim. Inj., ECF No. 6 (“Pl.’s Mot.”).

II. DISCUSSION

Berger attempts to invoke the jurisdiction of the Court of International Trade according to the Court’s residual jurisdictional provision, 28 U.S.C. § 1581(i).¹ Compl. ¶¶ 3–10. This is unavailing, as the court may not exercise jurisdiction under that provision if jurisdiction is, or could have been, available under a provision in paragraphs (a) through (h) of § 1581, unless the relief available under such provision would be “manifestly inadequate.” *Wanxiang America Corp. v. United States*, 12 F.4th 1369, 1373 (Fed. Cir. 2021) (“§ 1581(i) is a statute of residual jurisdiction that may not be invoked where jurisdiction is or could have been available under any other subsection

¹ Citations herein to the United States Code are to the 2018 edition.

of § 1581, unless such other relief would be manifestly inadequate.”) (citing *Miller & Co. v. United States*, 824 F.2d 961, 963 (Fed. Cir. 1987)).

The court interprets plaintiff’s claim to be, in essence, that Customs unlawfully refused to void the denial of its two protests. *See* Compl. ¶ 30. As a remedy, Berger seeks an order that would require Customs “to reverse its protest denial decisions and return of [*sic*] the entries to unliquidated status or suspend the protest during the pendency of the litigation.” Compl. 8. It also seeks immediate injunctive relief to this effect. Pl.’s Mot. 22.

A plaintiff has the burden of demonstrating facts under which the court may exercise subject matter jurisdiction over its claim. *Norsk Hydro Canada, Inc. v. United States*, 472 F.3d 1347, 1355 (Fed. Cir. 2006) (“It is true that the Court of International Trade, like all federal courts, is a court of limited jurisdiction, and that the party invoking that jurisdiction bears the burden of establishing it.”) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). Berger has failed to do so.

According to Berger, Customs denied the two protests on the ground, *inter alia*, that it has made a final determination that the imported merchandise is subject to the Antidumping Duty Order. Compl. ¶ 19. Plaintiff has not demonstrated that any remedy it might obtain according to an action brought to contest CBP’s denial of its protests under section 515 of the Tariff Act of 1930, *as amended*, 19 U.S.C. § 1515, over

which action the court may exercise jurisdiction according to 28 U.S.C. § 1581(a), would be manifestly inadequate.

One of the justifications plaintiff offers to show manifest inadequacy is that an action brought according to 28 U.S.C. § 1581(a) would not “ensure adequate relief for successful scope decisions where entries have been *finally liquidated*.” Compl. ¶ 8. In making this assertion, plaintiff fails to explain how the relief is inadequate even though the commencing of an action to contest a protest denial under 19 U.S.C. § 1515 may prevent finality of liquidation from attaching. *See* 19 U.S.C. § 1514(a). Berger adds that:

CBP does not have scope ruling/inquiry statutes to follow for implementing regulations to provide adequate relief. The existing statute (19 U.S.C. § 1515(d)) does not go far enough in providing a remedy by forcing CBP to stand by while Commerce makes a decision as held by the aforementioned case law.

Compl. ¶ 9.² This argument is puzzling in light of plaintiff’s factual assertion that Customs already has made a “final and conclusive” decision on the scope issue. *See id.* ¶ 19.

Plaintiff’s final argument is that “[i]t is necessary that CBP receive gap filling directives to save the rights of plaintiff if either CBP or the CIT [Court of International Trade] is unwilling to reliquidate if the Plaintiff is eventually successful” and that “[i]f CBP does not have adequate law to law [*sic*], 28 U.S.C. § 1581(a) would accomplish

² This is an unclear reference. The Complaint does not contain citations to court cases in the portion appearing prior to ¶ 9. Compl. (Mar. 8, 2023), ECF No. 2.

nothing other than forcing Plaintiff to file a redundant case with the CIT.” *Id.* ¶ 10.

Because the action plaintiff has commenced according to 28 U.S.C. § 1581(i) must be

dismissed for lack of jurisdiction, such a case would not be “redundant.” Moreover,

plaintiff indicates that it has a scope ruling request pending before Commerce. Compl.

¶ 25. Commencing an action to contest the protest denials would not by itself preclude

plaintiff from also contesting a future scope ruling by Commerce by bringing an action

under section 516A of the Tariff Act, 19 U.S.C. § 1516a, which potentially could be heard

in this Court according to the jurisdictional provision in 28 U.S.C. § 1581(c).

The only remaining issue for the court to decide is whether the action plaintiff has commenced could be construed by the court as an action to contest the protest denials. In some circumstances, a court may be able to exercise jurisdiction of an action even though plaintiff invokes the incorrect jurisdictional provision. The question presented is whether the action Berger has commenced under 28 U.S.C. § 1581(i) could suffice as an action brought according to 28 U.S.C. § 1581(a) to contest the denial of protests under section 515 of the Tariff Act, 19 U.S.C. § 1515. No such circumstance is presented here. An action to contest a protest denial by Customs is lawfully commenced only “in accordance with the rules of the Court of International Trade.” 28 U.S.C. § 2636(a). The action plaintiff has commenced does not conform to this Court’s rules for commencing an action to contest a denial of a protest. *See* USCIT Rs. 3(a)(1), 87; Form 1.

III. CONCLUSION

For the reasons discussed in the foregoing, the court must dismiss this action for lack of subject matter jurisdiction. Judgment will enter accordingly.

/s/ Timothy C. Stanceu

Timothy C. Stanceu

Judge

Dated: March 10, 2023

New York, New York