UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Peer Bearing Company - Changshan v. United States

Peer Bearing Company - Changshan v. United States, 766 F.3d 1396 (Fed. Cir. 2014) · No. 2014-1001 · Decided September 12, 2014

SUMMARY

The United States Court of Appeals for the Federal Circuit reviewed Commerce’s application of adverse facts available in an antidumping-duty administrative review involving Peer Bearing Company–Changshan. The court held that the importer had a duty to maintain access to EP data because it knew that the proper methodology for calculating the antidumping margin was disputed and that the data might be requested. The court vacated the Court of International Trade’s decision and remanded with instructions to reinstate Commerce’s adverse-facts-available determination and margin calculation.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Moore; Newman; Plager
JURISDICTION	Federal
DECIDED	September 12, 2014
DOCKET	2014-1001
DISPOSITION	vacated
PROCEDURAL POSTURE	The Timken Company appealed the United States Court of International Trade's judgment affirming Commerce's second remand redetermination in an antidumping-duty administrative review.
STANDARD OF REVIEW	The Federal Circuit re-applies the statutory standard of review applied by the Court of International Trade and upholds Commerce's determination unless it is unsupported by substantial evidence on the record or otherwise not in accordance with law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	The Timken Company v. Peer Bearing Company - Changshan

TOPICS

administrative law · judicial review of agency action · statutory interpretation · appellate procedure · commercial litigation

PRACTICE AREAS

administrative law · international trade · antidumping duties · appellate procedure

QUESTIONS PRESENTED

1. Whether 19 U.S.C. § 1677e(b) permits Commerce to apply adverse facts available when the respondent failed to maintain data that Commerce first requested on remand.
2. Whether substantial evidence supported Commerce's determination that Peer Bearing failed to act to the best of its ability by not maintaining access to export-price data during the administrative and judicial proceedings.

HOLDINGS

1. Section 1677e(b) permits Commerce to apply adverse facts available when a respondent fails to maintain information that a reasonable and responsible importer should have anticipated being called upon to produce, even if Commerce first requests the information on remand.
2. Substantial evidence supported Commerce's determination that Peer Bearing failed to cooperate to the best of its ability by not maintaining access to the export-price data.

KEY QUOTATIONS

> *"To comply with "the best of its ability" provision, an importer must maintain access to information so long as that information is the type that a reasonable and responsible importer would have known was required to be maintained."* (766 F.3d at 1403)

> *"We hold that where, as here, there is a dispute over the proper methodology that Commerce should use to calculate the antidumping duty margin, and the respondent has notice of the dispute at a time when the respondent has access to the data needed to determine the U.S. price according to either methodology, the respondent has a duty to maintain access to the data."* (766 F.3d at 1404)

FACTUAL BACKGROUND

Peer Bearing Company - Changshan imported tapered roller bearings subject to an antidumping-duty order and sold them through an unaffiliated U.S. importer and its U.S. affiliate. Commerce initially calculated the U.S. price using constructed-export-price data, but later determined that export-price data should be used. Peer Bearing had not provided the corresponding export-price data and, after a change in ownership, could no longer obtain it. Commerce concluded that Peer Bearing failed to cooperate to the best of its ability by failing to maintain access to the data and applied adverse facts available.

PROCEDURAL HISTORY

Commerce initially calculated Peer Bearing's antidumping margin using constructed-export-price data, later changed to an export-price methodology, and on the first remand applied adverse facts available after Peer Bearing could not produce export-price data. The Court of International Trade rejected that application and remanded. Commerce then calculated a margin using the available constructed-export-price data under protest, and the Court of International Trade affirmed. The Federal Circuit vacated that judgment and remanded with instructions to reinstate Commerce's adverse-facts-available determination and margin calculation from the first remand.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The Court of International Trade was instructed to reinstate Commerce's application of adverse facts available and its calculation of Peer Bearing's margin in the first remand redetermination.

CASES CITED

- Peer Bearing Co. - Changshan v. United States, 752 F. Supp. 2d 1353 (Ct. Int'l Trade 2011)
- Peer Bearing Co. - Changshan v. United States, 853 F. Supp. 2d 1365 (Ct. Int'l Trade 2012)
- Peer Bearing Co. - Changshan v. United States, 2013 WL 4615134 (Ct. Int'l Trade Aug. 30, 2013)
- Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330 (Fed. Cir. 2002)
- Nippon Steel Corp. v. United States, 337 F.3d 1373 (Fed. Cir. 2003)
- Ta Chen Stainless Steel Pipe, Ltd. v. United States, No. 97-08-01344, 1999 WL 1001194 (Ct. Int'l Trade Oct. 28, 1999)

CITED IN

- Peer Bearing Company - Changshan v. United States, Peer Bearing Co.-Changshan v. United States, 766 F.3d 1396 (Fed. Cir. 2014)
- Peer Bearing Company - Changshan v. United States, Peer Bearing Co.-Changshan v. United States, 766 F.3d 1396 (Fed. Cir. 2014)