

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Trustees in Bankruptcy of North American Rubber Thread Co., Inc.

v. United States

593 F.3d 1346 (Fed. Cir. 2010) · No. 2009-1191 · Decided February 1, 2010

SUMMARY

The Federal Circuit reviewed challenges to the Department of Commerce's refusal to initiate a second changed-circumstances review of an antidumping duty order covering extruded rubber thread from Malaysia. The court held that the Court of International Trade had residual jurisdiction under 28 U.S.C. § 1581(i)(4) over the bankruptcy trustees' challenge, but not over Heveafil's challenge because Heveafil had an adequate alternative remedy under § 1581(c). The court further held that the trustees were judicially estopped from advocating a revocation date they had previously opposed successfully before Commerce.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Chief Judge Michel; Circuit Judge Friedman; Circuit Judge Gajarsa
JURISDICTION	Federal
DECIDED	February 1, 2010
DOCKET	2009-1191
DISPOSITION	other
PROCEDURAL POSTURE	The United States appealed the Court of International Trade's determination that it had jurisdiction under 28 U.S.C. § 1581(i)(4) over challenges by NART and Heveafil to the Department of Commerce's refusal to initiate a second changed-circumstances review, and its determination that NART was not judicially estopped from taking a position contrary to its earlier position before Commerce.
STANDARD OF REVIEW	The Federal Circuit reviewed the CIT's jurisdictional rulings without deference and reviewed its decision not to apply judicial estoppel for abuse of discretion.
PRECEDENTIAL VALUE	published precedential Federal Circuit opinion
PARTIES	United States v. Trustees in Bankruptcy of North American Rubber Thread Co., Inc., Filmax Sdn. Bhd., Heveafil USA Inc., Heveafil Sdn.

TOPICS

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administrative law

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PRACTICE AREAS

administrative law

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QUESTIONS PRESENTED

1. Whether the Court of International Trade had jurisdiction under 28 U.S.C. § 1581(i)(4) over Heveafil's challenge to Commerce's refusal to initiate a second changed-circumstances review.
2. Whether the Court of International Trade had jurisdiction under 28 U.S.C. § 1581(i)(4) over NART's challenge to Commerce's refusal to initiate a second changed-circumstances review.
3. Whether NART was judicially estopped from advocating an October 1, 1995 revocation date after previously prevailing before Commerce on its position that the effective date should be October 1, 2003.

HOLDINGS

1. Heveafil could not invoke the CIT's residual jurisdiction under 28 U.S.C. § 1581(i)(4) because jurisdiction under § 1581(c) was available and the remedy under that subsection was not manifestly inadequate.
2. The CIT had jurisdiction under 28 U.S.C. § 1581(i)(4) over NART's challenge to Commerce's refusal to initiate a second changed-circumstances review.
3. NART was judicially estopped from arguing before the CIT that the antidumping duty order should have been revoked effective October 1, 1995, because it had previously prevailed before Commerce on the contrary position that the effective date should be October 1, 2003.

KEY QUOTATIONS

“There is nothing in § 1581(i)(4) that precludes judicial review of Commerce refusals to initiate changed circumstances reviews.” (1353)

“Once a party takes a position in litigation, it cannot lightly about-face and subsequently take the opposite position in later litigation.” (1357)

FACTUAL BACKGROUND

Commerce entered an antidumping duty order in 1992 covering extruded rubber thread from Malaysia. In a 2004 changed-circumstances review, Heveafil sought revocation effective October 1, 1995, while NART agreed that revocation was warranted but successfully advocated an October 1, 2003 effective date. After NART and

Heveafil settled their dispute, NART changed its position and joined Heveafil in seeking a second review with a 1995 effective date.

PROCEDURAL HISTORY

Commerce revoked an antidumping duty order effective October 1, 2003 after NART opposed Heveafil's requested October 1, 1995 effective date. After NART and Heveafil settled their dispute, both sought a second changed-circumstances review seeking a 1995 effective date, but Commerce refused because the order had already been revoked. The Court of International Trade found residual jurisdiction over both claims and ultimately ordered Commerce to conduct the review. The Federal Circuit reviewed only the jurisdictional and judicial-estoppel issues from the first CIT decision, not the merits rulings in the later proceedings.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. The court vacated the portion of the CIT's judgment ordering Commerce to initiate a second changed-circumstances review because remand would be futile.

CASES CITED

- JCM, Ltd. v. United States, 210 F.3d 1357, 1359 (Fed. Cir. 2000)
- Data General Corp. v. Johnson, 78 F.3d 1556, 1565 (Fed. Cir. 1996)
- International Custom Products v. United States, 467 F.3d 1324, 1327 (Fed. Cir. 2006)
- Norcal/Crosetti Foods, Inc. v. United States, 963 F.2d 356, 359 (Fed. Cir. 1992)
- Miller & Co. v. United States, 824 F.2d 961, 963 (Fed. Cir. 1987)
- New Hampshire v. Maine, 532 U.S. 742, 749-53 (2001)
- Davis v. Wakelee, 156 U.S. 680, 689 (1895)
- Lampi Corp. v. American Power Products, Inc., 228 F.3d 1365, 1377 (Fed. Cir. 2000)
- South Coast Air Quality Management District v. Environmental Protection Agency, 472 F.3d 882, 891-92 (D.C. Cir. 2006)
- Simon v. Safelite Glass Corp., 128 F.3d 68, 71-74 (2d Cir. 1997)
- Portela-Gonzalez v. Secretary of the Navy, 109 F.3d 74, 77-78 (1st Cir. 1997)
- Risetto v. Plumbers & Steamfitters Local 343, 94 F.3d 597, 604 (9th Cir. 1996)
- United States v. Hook, 195 F.3d 299, 306 (7th Cir. 1999)
- Edwards v. Aetna Life Insurance Co., 690 F.2d 595, 598-99 (6th Cir. 1982)