

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Saha Thai Steel Pipe Public Company Limited v. United States

No. 2022-1175, United States Court of Appeals for the Federal Circuit (December 4, 2023)

SUMMARY

The Federal Circuit affirmed the Court of International Trade, holding that the Department of Commerce cannot apply a "particular market situation" (PMS) adjustment to the cost of production under 19 U.S.C. § 1677b(b) when calculating antidumping margins. Citing **Hyundai Steel Co. v. United States**, the court emphasized that the Trade Preferences Extension Act of 2015 (TPEA) added PMS authority only to the constructed value statute (§ 1677b(e)), not to the cost of production statute. The court rejected the agency's attempt to circumvent this statutory limitation by reframing a cost of production adjustment as a constructed value calculation.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Hughes; Linn; Stark
JURISDICTION	Federal
DECIDED	December 4, 2023
DOCKET	2022-1175
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States Court of International Trade in Nos. 1:18-cv-00214-JCG, 1:18-cv-00219-JCG, 1:18-cv-00231-JCG, Judge Jennifer Choe-Groves.
STANDARD OF REVIEW	We will uphold Commerce’s determination unless it is unsupported by substantial evidence on the record or otherwise not in accordance with the law. (quoting <i>Peer Bearing Co.-Changshan v. United States</i> , 766 F.3d 1396, 1399 (Fed. Cir. 2014))
PRECEDENTIAL VALUE	published
PARTIES	Wheatland Tube Company v. Saha Thai Steel Pipe Public Company Limited, Thai Premium Pipe Company Ltd.

TOPICS

- appellate procedure
- commercial

PRACTICE AREAS

International Trade

QUESTIONS PRESENTED

1. Whether the Department of Commerce may adjust the cost of production for a particular market situation under 19 U.S.C. § 1677b(b) when calculating antidumping margins.

HOLDINGS

1. The agency cannot use PMS adjustments for cost of production calculations. The TPEA amendment authorizing PMS adjustments applies only to constructed value calculations under § 1677b(e), not to cost of production calculations under § 1677b(b).

KEY QUOTATIONS

“In enacting the TPEA, Congress did not leave a gap for Commerce to fill with regard to adjusting the costs of production. Rather, Congress simply and unambiguously allowed for a PMS adjustment to constructed value but not to the costs of production for purposes of the sales-below-cost test.” (7)

“The agency cannot use constructed value language found in § 1677b(e) as a backdoor to slip in a PMS adjustment for cost of production calculations.” (7)

FACTUAL BACKGROUND

Wheatland Tube Company, a domestic producer of steel pipes, intervened in an antidumping review of imports of circular welded carbon steel pipes from Thailand. It alleged that a particular market situation (PMS) in Thailand distorted the costs of hot rolled steel coil, which constitutes about 80% of the cost of production. The Department of Commerce initially found a PMS and made upward adjustments to the cost of production for the Thai respondents. The Court of International Trade remanded, citing Hyundai Steel, and after two remands, Commerce recalculated without PMS adjustments.

PROCEDURAL HISTORY

The Department of Commerce initially made particular market situation (PMS) adjustments to the cost of production in an antidumping review. The Court of International Trade (CIT) remanded, citing Hyundai Steel Co. v. United States, 19 F.4th 1346 (Fed. Cir. 2021), which held that PMS adjustments are not authorized for cost of production calculations. On first remand, Commerce continued to apply PMS adjustments, and the CIT again remanded. On second remand, Commerce recalculated without PMS adjustments, and the CIT sustained that determination. Wheatland appealed.

DISPOSITION

affirmed

CASES CITED

- Hyundai Steel Co. v. United States, 19 F.4th 1346 (Fed. Cir. 2021)
- Peer Bearing Company - Changshan v. United States, Peer Bearing Co.-Changshan v. United States, 766 F.3d 1396 (Fed. Cir. 2014)

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