UNITED STATES COURT OF INTERNATIONAL TRADE

China Steel Corp. v. United States

306 F. Supp. 2d 1291 (Ct. Int'l Trade 2004) · No. 01-01040 · Decided January 26, 2004

SUMMARY

The United States Court of International Trade reviews the Department of Commerce's remand determination in an antidumping duty proceeding involving hot-rolled carbon steel flat products from Taiwan. The court sustains Commerce's determinations concerning affiliation, the use of affiliated-party home-market sales, adverse facts available, and corroboration.

CASE DETAILS

COURT	United States Court of International Trade
WRITING FOR THE COURT	Pogue, Judge
JURISDICTION	USA
DECIDED	January 26, 2004
DOCKET	01-01040
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs sought review under 28 U.S.C. § 1581(c) of the Department of Commerce's Final Results of Redetermination Pursuant to Court Remand in an antidumping-duty investigation involving hot-rolled carbon steel flat products from Taiwan.
STANDARD OF REVIEW	The court upheld Commerce's determination unless it was unsupported by substantial evidence on the record or otherwise not in accordance with law, pursuant to 19 U.S.C. § 1516a(b)(1)(B)(i).
PRECEDENTIAL VALUE	Published opinion of the United States Court of International Trade
PARTIES	China Steel Corporation, Yieh Loong v. United States

TOPICS

judicial review of agency action · administrative law · commercial litigation · statutory interpretation · exhaustion of remedies

PRACTICE AREAS

international trade | antidumping law | administrative law | judicial review

QUESTIONS PRESENTED

1. Whether Commerce's determination that China Steel and Yieh Loong were affiliated, and that the collapsed entity was affiliated with Yieh Loong's affiliates, complied with law and was supported by substantial evidence.
2. Whether Commerce properly determined that plaintiffs' sales to affiliates exceeded the five-percent threshold and could be used in calculating normal value.
3. Whether Commerce properly applied an adverse inference under 19 U.S.C. § 1677e(b) after finding that plaintiffs failed to cooperate to the best of their ability.
4. Whether Commerce properly corroborated the adverse-facts-available dumping margin under 19 U.S.C. § 1677e(c).
5. Whether the exhaustion doctrine barred judicial review of plaintiffs' corroboration objections.

HOLDINGS

1. Commerce's determination that China Steel exercised substantial control over Yieh Loong and that the companies were affiliated was supported by substantial evidence and was in accordance with law. The temporal aspect of the relationship was a factor to be considered but was not independently determinative.
2. Commerce properly determined that plaintiffs' aggregate home-market sales to affiliates substantially exceeded the five-percent threshold in 19 C.F.R. § 351.403(d) and therefore properly required plaintiffs to report downstream affiliate sales data.
3. Commerce properly applied an adverse inference under 19 U.S.C. § 1677e(b) after making the required objective and subjective findings that plaintiffs should have maintained the requested information and failed to use their maximum efforts to timely provide complete and accurate responses.
4. Commerce properly corroborated the 29.14-percent petition-based adverse-facts-available margin by comparing the petition's cost-of-manufacturing data with plaintiffs' own cost data and determining that the data were reasonably close.
5. The exhaustion doctrine did not bar review of plaintiffs' corroboration objections because Commerce first announced the challenged corroboration methodology in its final determination, leaving plaintiffs no practical opportunity to raise the objections before the agency.

KEY QUOTATIONS

> *"This Court will uphold an agency determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law.""* (1294)

> *""Compliance with the 'best of its ability' standard is determined by assessing whether the respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquires in an investigation.""* (1303-1304)

> *“An adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made; i.e., under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.”* (1304)

> *“Commerce cannot “overreach reality” when calculating a dumping margin, in that the rate must be a “reasonably accurate estimate of the [plaintiff's] actual rate, albeit with some built-in increase intended as a deterrent to non-compliance.””* (1311)

FACTUAL BACKGROUND

Commerce investigated whether hot-rolled carbon steel flat products from Taiwan were sold in the United States at less than fair value. China Steel acquired a significant equity interest in Yieh Loong during the period of investigation, gained management and operational rights, shared board members and a supervisor with Yieh Loong, and directed the appointment of managerial personnel. Commerce concluded that the companies were affiliated and should be collapsed, that affiliate home-market sales exceeded the regulatory five-percent threshold, and that plaintiffs failed to provide complete and timely product-characteristics and downstream-sales data.

PROCEDURAL HISTORY

Commerce originally treated China Steel and Yieh Loong as a collapsed entity, applied adverse facts available, and used affiliate downstream-sales data in calculating the dumping margin. In China Steel Corp. v. United States, 27 CIT ___, 264 F. Supp. 2d 1339 (2003), the court remanded aspects of Commerce's determination for further consideration of affiliation, downstream-sales data, adverse facts available, and related issues. On remand, Commerce reaffirmed its determinations. The court sustained the remand determination and Commerce's corroboration determination in their entirety.

DISPOSITION

affirmed

CASES CITED

- China Steel Corp. v. United States, 27 CIT ___, 264 F. Supp. 2d 1339 (2003)
- Hontex Enters., Inc. v. United States, 27 CIT ___, 248 F. Supp. 2d 1323, 1343-44 & n. 17 (2003)
- Ta Chen Stainless Steel Pipe, Inc. v. United States, 24 CIT 841, 844-45 (2000)
- Corus Staal BV v. United States Dep't of Commerce, 27 CIT ___, 259 F. Supp. 2d 1253, 1260 (2003)
- Ta Chen Stainless Steel Pipe, Ltd. v. United States, 23 CIT 804, 813 (1999)
- Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States, 25 CIT ___, 178 F. Supp. 2d 1305, 1332 (2001)
- Nippon Steel Corp. v. United States, 337 F.3d 1373, 1381-84 (Fed. Cir. 2003)
- Shandong Huarong Gen. Grp. Corp. v. United States, slip op. 03-135 at 36 (Ct. Int'l Trade Oct. 22, 2003)
- Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)
- Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1336, 1340 (Fed. Cir. 2002)

- Zenith Elecs. Corp. v. United States, 988 F.2d 1573, 1583 (Fed. Cir. 1993)
- Timken Co. v. United States, 26 CIT ___, 201 F. Supp. 2d 1316, 1340 (2002)
- Consol. Bearings Co. v. United States, 25 CIT ___, 166 F. Supp. 2d 580, 586 (2001)
- McKart v. United States, 395 U.S. 185, 194, 196-97 (1969)
- Al Tech Specialty Steel Corp. v. United States, 11 CIT 372, 377, 661 F. Supp. 1206, 1210 (1987)
- LTV Steel Co. v. United States, 21 CIT 838, 869, 985 F. Supp. 95, 120 (1997)
- SKF USA, Inc. v. United States Dep't of Commerce, 15 CIT 152, 159 n. 6, 762 F. Supp. 344, 350 n. 6 (1991)
- Am. Permac, Inc. v. United States, 10 CIT 535, 536 n. 2, 642 F. Supp. 1187, 1188 n. 2 (1986)
- Ferro Union, Inc. v. United States, 23 CIT 178, 192, 205, 44 F. Supp. 2d 1310, 1324, 1335 (1999)
- F.LLI De Cecco Di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000)
- Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc., 419 U.S. 281, 286 (1974)
- Olympia Indus., Inc. v. United States, 22 CIT 387, 389, 7 F. Supp. 2d 997, 1000 (1998)
- Kawasaki Steel Corp. v. United States, 24 CIT 684, 694, 110 F. Supp. 2d 1029, 1039 (2000)