UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Hyundai Steel Company v. United States

Hyundai Steel Co. v. United States · No. 21-1748 · Decided December 10, 2021

SUMMARY

The United States Court of Appeals for the Federal Circuit held that the 2015 amendments to the antidumping statute did not authorize the Department of Commerce to adjust exporters' costs of production for purposes of the sales-below-cost test based on a particular market situation. The court affirmed the Court of International Trade's statutory interpretation and concluded that it therefore did not need to decide whether Commerce's particular-market-situation finding was supported by substantial evidence. The appeal arose from an administrative review of antidumping duties on welded line pipe from South Korea.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Bryson; O'Malley; Hughes
JURISDICTION	Federal
DECIDED	December 10, 2021
DOCKET	21-1748
DISPOSITION	affirmed
PROCEDURAL POSTURE	Welspun Tubular LLC USA appealed the Court of International Trade's judgment concerning an administrative review of an antidumping duty order on welded line pipe from Korea.
STANDARD OF REVIEW	The Federal Circuit reviewed Commerce's statutory interpretation under the Chevron framework and reviewed the Trade Court's judgment in an antidumping matter. The court did not reach whether Commerce's PMS finding was supported by substantial evidence.
PRECEDENTIAL VALUE	published precedential Federal Circuit opinion
PARTIES	Welspun Tubular LLC USA v. Hyundai Steel Company, SeAH Steel Corp., NEXTEEL Co., Ltd.

TOPICS

statutory interpretation · chevron deference · administrative law · preservation of error · appellate procedure

PRACTICE AREAS

international trade · antidumping law · administrative law · appellate procedure

QUESTIONS PRESENTED

1. Whether the 2015 amendments to the antidumping statute authorized Commerce to adjust an exporter's costs of production for purposes of the sales-below-cost test based on a particular market situation.
2. Whether 19 U.S.C. § 1677b(f)(1)(A) supplied an alternative basis for Commerce's PMS-based cost adjustment.
3. Whether Commerce's finding that a particular market situation existed was supported by substantial evidence.

HOLDINGS

1. The 2015 amendments to the antidumping statute authorize PMS adjustments to constructed value under 19 U.S.C. § 1677b(e), but do not authorize Commerce to make PMS-based adjustments to costs of production under 19 U.S.C. § 1677b(b) for purposes of the sales-below-cost test.
2. The court did not consider the argument because Welspun failed to preserve it, and Commerce had not relied on section 1677b(f)(1)(A) in its final determination.
3. The court did not reach the substantial-evidence challenge because Commerce lacked statutory authority to make the PMS-based cost adjustment.

KEY QUOTATIONS

> *“We agree with the Trade Court that the 2015 amendments to the antidumping statute do not authorize Commerce to use the existence of a PMS as a basis for adjusting a respondent’s costs of production to determine whether a respondent has made home market sales below cost.”* (3)

> *“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.”* (15)

> *“We therefore do not address Welspun’s section 1677b(f)(1)(A) argument in this case.”* (19)

FACTUAL BACKGROUND

Commerce's administrative review concerned welded line pipe sold by Hyundai Steel Company and SeAH Steel Corporation between May 22, 2015, and November 30, 2016. Commerce found that a particular market situation existed in Korea based on factors including Korean steel subsidies, Chinese steel overcapacity, strategic alliances among Korean steel companies, and government involvement in the electricity market. Commerce used the quantifiable subsidy factor to make an upward adjustment to the respondents' production costs for the sales-below-cost test, resulting in enhanced antidumping duties.

PROCEDURAL HISTORY

Commerce conducted a 2015-2016 administrative review and adjusted Hyundai's and SeAH's costs of production based on its finding of a particular market situation. The Court of International Trade held that the antidumping statute did not authorize Commerce to make a PMS-based adjustment to costs of production and remanded. After additional remands and Commerce's acquiescence under protest, the Trade Court entered judgment, and Welspun appealed. The Federal Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Husteel Co. v. United States, 426 F. Supp. 3d 1376, 1383-89 (Ct. Int'l Trade 2020)
- Husteel Co. v. United States, 463 F. Supp. 3d 1334 (Ct. Int'l Trade 2020)
- Husteel Co. v. United States, 494 F. Supp. 3d 1287 (Ct. Int'l Trade 2021)
- Saha Thai Steel Pipe Public Co. v. United States, 422 F. Supp. 3d 1363, 1369-70 (Ct. Int'l Trade 2019)
- Borusan Mannesmann Boru Sanayi ve Ticaret A.Ş. v. United States, 426 F. Supp. 3d 1395, 1411-12 (Ct. Int'l Trade 2020)
- Dong-A Steel Co. v. United States, 475 F. Supp. 3d 1317, 1337-41 (Ct. Int'l Trade 2020)
- Pesquera Mares Australes Ltda. v. United States, 266 F.3d 1372, 1382 (Fed. Cir. 2001)
- Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984)
- Atilano v. McDonough, 12 F.4th 1375, 1380 (Fed. Cir. 2021)
- Timex, V.I., Inc. v. United States, 157 F.3d 879, 882 (Fed. Cir. 1998)
- Russello v. United States, 464 U.S. 16, 23 (1983)
- Babb v. Wilkie, 140 S. Ct. 1168, 1177 (2020)
- Ad Hoc Shrimp Trade Action Committee v. United States, 802 F.3d 1339, 1350-51 (Fed. Cir. 2015)
- Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States, 13 F.3d 398, 401-02 (Fed. Cir. 1994)
- FAG Italia S.P.A. v. United States, 291 F.3d 806, 816 (Fed. Cir. 2002)
- Railway Labor Executives' Association v. National Mediation Board, 29 F.3d 655, 659 (D.C. Cir.), amended, 38 F.3d 1224 (D.C. Cir. 1994)
- Carcieri v. Salazar, 555 U.S. 379, 391 (2009)
- Corus Staal BV v. United States, 502 F.3d 1370, 1378 n.4 (Fed. Cir. 2007)
- Novosteel SA v. United States, 284 F.3d 1261, 1274 (Fed. Cir. 2002)
- SEC v. Chenery Corp., 332 U.S. 194, 196 (1947)
- Changzhou Wujin Fine Chemical Factory Co. v. United States, 701 F.3d 1367, 1379 (Fed. Cir. 2012)
- Thai I-Mei Frozen Foods Co. v. United States, 616 F.3d 1300, 1307 (Fed. Cir. 2010)