UNITED STATES COURT OF INTERNATIONAL TRADE

Zenith Electronics Corp. v. United States; Independent Radionic Workers of America, et al. v. United States

633 F. Supp. 1382 (Ct. Int'l Trade 1986) · No. Nos. 85-06-00788, 85-07-00905 · Decided April 24, 1986

SUMMARY

The United States Court of International Trade reviewed consolidated challenges to the Commerce Department's antidumping determination concerning Japanese television receivers. The court addressed the proper calculation of the Japanese commodity-tax adjustment under 19 U.S.C. § 1677a(d)(1)(C), including whether the adjustment should increase United States price and whether it must account for tax pass-through. The opinion concludes that the statute required an upward adjustment to United States price based on the tax that would have applied to the exported merchandise, rather than the methodology used by Commerce.

CASE DETAILS

COURT	United States Court of International Trade
WRITING FOR THE COURT	Watson
JURISDICTION	USA
DECIDED	April 24, 1986
DOCKET	Nos. 85-06-00788, 85-07-00905
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated actions under 19 U.S.C. § 1516a challenging the Department of Commerce, International Trade Administration's final results in an administrative review of an antidumping finding. Plaintiffs moved for judgment upon the agency record under Rule 56.1; the United States moved for remand.
STANDARD OF REVIEW	Whether the challenged ITA determination was supported by substantial evidence on the record and was otherwise in accordance with law, under 19 U.S.C. § 1516a(b)(1)(B).
PRECEDENTIAL VALUE	published
PARTIES	Zenith Electronics Corporation, Independent Radionic Workers of America, et al. v. United States

TOPICS

judicial review of agency action | administrative law | statutory interpretation | legislative history | commercial litigation

PRACTICE AREAS

international trade | antidumping law | administrative law | statutory interpretation

QUESTIONS PRESENTED

1. Whether the ITA unlawfully adjusted foreign market value rather than increasing United States price under 19 U.S.C. § 1677a(d)(1)(C).
2. Whether the ITA unlawfully used the amount of commodity tax actually collected on home-market merchandise rather than the amount that would have been imposed on the exported merchandise had it been sold in Japan.
3. Whether the pass-through clause in § 1677a(d)(1)(C) requires the ITA to measure the extent to which the commodity tax was added to or included in home-market prices.
4. Whether the ITA could assume full pass-through of the commodity tax without substantial evidence.
5. Whether a circumstances-of-sale adjustment under 19 U.S.C. § 1677b(a)(4)(B) was required to offset differences created by the foreign-tax adjustment.

HOLDINGS

1. Section 1677a(d)(1)(C) requires the ITA to increase United States price, rather than decrease foreign market value, by the amount of Japanese commodity tax rebated or not collected on merchandise exported to the United States because of its exportation. The adjustment must be based on the tax that would have been imposed on the exported merchandise had it been sold in Japan, not necessarily the tax actually assessed on comparison merchandise sold in the home market.
2. The pass-through clause in § 1677a(d)(1)(C) requires the ITA to determine the extent to which the foreign tax was added to or included in the price of comparable merchandise sold in the exporting country and to cap the adjustment at that amount.
3. The ITA may not assume full pass-through of the commodity tax without evidentiary support. It must adopt a satisfactory methodology for measuring tax absorption and base the result on substantial evidence.
4. The antidumping law does not require a circumstances-of-sale adjustment under § 1677b(a)(4)(B) to offset a tax differential resulting from actual dumping after the statutory foreign-tax adjustment is made.

KEY QUOTATIONS

> *"The language of 19 U.S.C. § 1677a(d)(1)(C) clearly and unambiguously delineates the adjustment to be performed by the Commerce Department."* (1388)

> *“The inescapable conclusion is that Congress intended the administering agency to perform tax absorption measurements for application in individual cases.”* (1398)

> *“It is the duty of the ITA to enforce and administer the provisions of the antidumping law as they have been written by Congress and interpreted by the courts.”* (1401)

> *“The agency's conclusion that a full pass-through occurred in all cases is not supported by substantial evidence.”* (1402)

FACTUAL BACKGROUND

The cases arose from an ITA administrative review concerning television receivers exported from Japan to the United States. Japan imposed a 15 percent ad valorem commodity tax on certain televisions sold for domestic consumption but did not collect the tax on export sales. In calculating dumping margins, the ITA deducted the full amount of commodity tax collected on Japanese home-market sales from foreign market value rather than increasing United States price by the tax rebated or not collected on the exported merchandise. The ITA also assumed that the full tax was passed through to home-market purchasers without measuring tax absorption.

PROCEDURAL HISTORY

The ITA reviewed antidumping duties on Japanese television receivers exported during April 1, 1980, through March 31, 1981, and issued final results determining no dumping or de minimis or small dumping margins. Plaintiffs challenged the ITA's treatment of the Japanese commodity tax under 19 U.S.C. § 1677a(d)(1)(C). The court granted plaintiffs' motions, granted the government's cross-motions for remand in part, reversed the final results as to the commodity-tax adjustment, and remanded for recalculation.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The ITA must determine the amount of Japanese commodity tax rebated or not collected on televisions exported to the United States, determine the amount of commodity tax added to or included in the home-market price of comparison sales, base both determinations on substantial evidence, and calculate the adjustment as the lesser of those amounts. The ITA was ordered to report its recalculations and redeterminations within 90 days after entry of the order.

CASES CITED

- Smith-Corona Group v. United States, 713 F.2d 1568, 1575-77, 1582 (Fed. Cir. 1983), cert. denied, 465 U.S. 1022 (1984)
- Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843-44 n.9 (1984)
- Board of Governors of the Federal Reserve System v. Dimension Financial Corporation, 474 U.S. 361, 106 S. Ct. 681, 88 L. Ed. 2d 691 (1986)
- Southeastern Community College v. Davis, 442 U.S. 397, 411 (1979)

- United States v. Passavant, 169 U.S. 16, 18 (1898)
- Aaron v. SEC, 446 U.S. 680, 695 (1980)
- United States v. H. Rosenthal Co., 609 F.2d 999, 1001-02 (C.C.P.A. 1979)
- Huffy Corp. v. United States, 10 CIT ___, 632 F. Supp. 50, 56-57 (1986)
- United States ex rel. Kansas City Southern Ry. Co. v. ICC, 252 U.S. 178, 185-88 (1920)
- Continental Steel Co. v. United States, 9 CIT ___, 614 F. Supp. 548, 554 (1985)
- Zenith Radio Corp. v. United States, 9 CIT ___, 606 F. Supp. 695, 698 n.7 (1985), aff'd, 783 F.2d 184 (Fed. Cir. 1986)
- Zenith Radio Corp. v. United States, 9 CIT ___, 606 F. Supp. 695 (1985), aff'd, 783 F.2d 184 (Fed. Cir. 1986)
- American Express Co. v. United States, 472 F.2d 1050, 1058 (C.C.P.A. 1973)
- Lewyt Corp. v. Commissioner of Internal Revenue, 349 U.S. 237, 240 (1955)
- Zenith Radio Corp. v. United States, 437 U.S. 443, 456-57 (1978)
- Timken Co. v. United States, 10 CIT ___, 630 F. Supp. 1327, 1348-50 (1986)