

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Hyundai Electric & Energy Systems Co. v. United States

Hyundai Electric & Energy Systems Co. v. United States · No. 21-1009 · Decided October 4, 2021

SUMMARY

The United States Court of Appeals for the Federal Circuit affirmed the U.S. Court of International Trade’s judgment sustaining the Department of Commerce’s final results in the fifth administrative review of the antidumping duty order on large power transformers from South Korea. The court held that Commerce appropriately relied on facts otherwise available, applied an adverse inference, and canceled verification based on Hyundai’s failure to provide reliable and verifiable cost information. The opinion applies the substantial-evidence and compliance-with-law standards under 19 U.S.C. § 1516a(b)(1)(B)(i).

CASE DETAILS

|                       |                                                                                                                                                                                                                                            |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Federal Circuit                                                                                                                                                                                     |
| WRITING FOR THE COURT | Reyna, Circuit Judge; Newman, Circuit Judge; Hughes, Circuit Judge                                                                                                                                                                         |
| JURISDICTION          | Federal                                                                                                                                                                                                                                    |
| DECIDED               | October 4, 2021                                                                                                                                                                                                                            |
| DOCKET                | 21-1009                                                                                                                                                                                                                                    |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Hyundai appealed the Court of International Trade's judgment sustaining the Department of Commerce's final results in the fifth administrative review of an antidumping duty order on large power transformers from the Republic of Korea. |
| STANDARD OF REVIEW    | The Federal Circuit applies the same standard of review as the Court of International Trade and upholds Commerce's determination unless it is unsupported by substantial evidence or otherwise not in accordance with law.                 |
| PRECEDENTIAL VALUE    | published precedential Federal Circuit opinion                                                                                                                                                                                             |
| PARTIES               | Hyundai Electric & Energy Systems Co., Ltd. v. United States, ABB Enterprise Software Inc.                                                                                                                                                 |

TOPICS

judicial review of agency action

administrative law

agency adjudication

standard of review

appellate procedure

## PRACTICE AREAS

international trade

antidumping duties

administrative law

appellate procedure

## QUESTIONS PRESENTED

1. Whether Commerce's decision to rely on facts otherwise available was supported by substantial evidence and consistent with law.
2. Whether Commerce's cancellation of verification was supported by substantial evidence and consistent with law.
3. Whether Commerce's use of an adverse inference in selecting from among the facts otherwise available was supported by substantial evidence and consistent with law.

## HOLDINGS

1. Commerce properly relied on facts otherwise available because necessary information concerning Hyundai's product-specific costs and cost reconciliation was missing from the record.
2. Commerce properly canceled verification because Hyundai failed to provide the information necessary for Commerce's analysis, and verification was not required as an attempt to obtain missing information.
3. Commerce properly drew an adverse inference in selecting from among the facts otherwise available because Hyundai failed to act to the best of its ability in responding to Commerce's requests.

## KEY QUOTATIONS

*"Where necessary information is absent, Commerce need not conduct a verification in an attempt to obtain the missing information."* (at 18)

*"The 'best of its ability' standard requires an interested party to 'put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.'"* (at 20)

## FACTUAL BACKGROUND

Commerce conducted the fifth administrative review of the antidumping duty order on large power transformers from Korea and selected Hyundai as a mandatory respondent. Hyundai disclosed that it had shifted costs among transformer projects and submitted partial, aggregate, or sample information concerning product-specific costs and cost reconciliation, despite repeated requests for detailed and itemized information. Commerce concluded that necessary information was missing and unverifiable, canceled verification, relied on facts otherwise available, and applied an adverse inference, resulting in a 60.81 percent antidumping margin.

## PROCEDURAL HISTORY

Commerce assigned Hyundai a 60.81 percent antidumping margin after relying on facts otherwise available and making an adverse inference because Hyundai did not provide complete, verifiable product-specific cost and

cost-reconciliation information. The Court of International Trade sustained Commerce's final results in their entirety. Hyundai appealed to the Federal Circuit, which affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Dupont Teijin Films USA, LP v. United States, 407 F.3d 1211, 1215 (Fed. Cir. 2005)
- SNR Roulements v. United States, 402 F.3d 1358, 1361 (Fed. Cir. 2005)
- Fujitsu Gen. Ltd. v. United States, 88 F.3d 1034, 1038 (Fed. Cir. 1996)
- Matsushita Elec. Indus. Co. v. United States, 750 F.2d 927, 933 (Fed. Cir. 1984)
- Universal Camera Corp. v. NLRB, 340 U.S. 474, 477 (1951)
- AMS Assocs., Inc. v. United States, 719 F.3d 1376, 1380 (Fed. Cir. 2013)
- Qingdao Sea-Line Trading Co. v. United States, 766 F.3d 1378, 1386-1387 (Fed. Cir. 2014)
- Jinko Solar Co. v. United States, 229 F. Supp. 3d 1333, 1356 (Ct. Int'l Trade 2017)
- Jiaxing Bro. Fastener Co. v. United States, 822 F.3d 1289, 1299 (Fed. Cir. 2016)
- Mukand, Ltd. v. United States, 767 F.3d 1300, 1306-1307 (Fed. Cir. 2014)
- Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-1383 (Fed. Cir. 2003)
- Maverick Tube Corp. v. United States, 857 F.3d 1353, 1361 (Fed. Cir. 2017)
- Hyundai Elec. & Energy Sys. Co. v. United States, 466 F. Supp. 3d 1303, 1307-1320 (Ct. Int'l Trade 2020)

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