

United States Court of Appeals for the Federal Circuit

UNITED STATES STEEL CORPORATION,
Plaintiff-Appellant

NUCOR CORPORATION,
Plaintiff

v.

UNITED STATES, BLUESCOPE STEEL (AIS) PTY
LTD., BLUESCOPE STEEL LTD, BLUESCOPE
STEEL AMERICAS, INC.,
Defendants-Appellees

2022-2078

Appeal from the United States Court of International
Trade in No. 1:20-cv-03815-RKE, Senior Judge Richard K.
Eaton.

Decided: April 4, 2024

SARAH E. SHULMAN, Cassidy Levy Kent (USA) LLP,
Washington, DC, argued for plaintiff-appellant. Also rep-
resented by YOHAI BAISBURD, THOMAS M. BELINE, CHASE
DUNN, JAMES EDWARD RANSELL, IV.

EMMA EATON BOND, Commercial Litigation Branch,
Civil Division, United States Department of Justice,

Washington, DC, argued for defendant-appellee United States. Also represented by BRIAN M. BOYNTON, TARA K. HOGAN, PATRICIA M. MCCARTHY; SPENCER NEFF, Office of the Chief Counsel for Trade Enforcement & Compliance, United States Department of Commerce, Washington, DC.

DANIEL L. PORTER, Curtis, Mallet-Prevost, Colt & Mosle LLP, Washington, DC, argued for defendants-appellees BlueScope Steel (AIS) Pty Ltd., BlueScope Steel Ltd, BlueScope Steel Americas, Inc. Also represented by JAMES BEATY, CHRISTOPHER A. DUNN, JAMES P. DURLING.

Before MOORE, *Chief Judge*, HUGHES and STARK, *Circuit Judges*.

HUGHES, *Circuit Judge*.

United States Steel Corp. appeals a decision from the United States Court of International Trade sustaining the Department of Commerce's determination that Australian producer and exporter of hot-rolled steel, BlueScope Steel (AIS) Pty Ltd., did not reimburse its affiliated U.S. importer, BlueScope Steel Americas, Inc., for antidumping duties. Because we agree with the trial court that the agency's determination is supported by substantial evidence and is otherwise in accordance with law, we affirm.

I

A

Under the Tariff Act of 1930, as amended, the Department of Commerce is authorized to administer the antidumping statute. *See* 19 U.S.C. §§ 1673, 1677(1). The purpose of the antidumping statute is to protect domestic industries from injury caused by foreign manufactured goods that are sold in the United States at prices below the fair market value of those goods. *See U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1353 (Fed. Cir. 2010). In

administering the statute, the agency will conduct investigations and assess antidumping duties where it determines that foreign goods are being sold in the United States at less-than-fair value. 19 U.S.C. § 1673. If requested by an interested party, the agency must also conduct an annual review of a previously issued antidumping duty order to determine the amount of dumping and the duties owed for the period of review. *Id.* § 1675(a)(1)(B), (2)(A). During the review, the agency calculates a “dumping margin” by comparing the price at which the merchandise is sold in the United States (export price) to a “normal value” benchmark. *See id.* §§ 1675(a)(2)(A)(ii), 1677(35)(A). Where a domestic importer is affiliated with the foreign exporter, the agency will use “constructed export price,” defined as the price at which the merchandise is first sold to a non-affiliated purchaser, with adjustments made to account for expenses incurred by the affiliated seller. *Id.* § 1677a(b), (d)(1).

When calculating export price or constructed export price, the agency must also account for additional factors, including whether the exporter has reimbursed the importer for antidumping duties owed on the merchandise. *See* 19 C.F.R. § 351.402(a), (f). If the agency finds that the importer has been reimbursed for antidumping duties, it will subtract the amount of reimbursement from the calculated export price, ultimately leading to a higher dumping margin and a larger duty owed. *Id.* § 351.402(f)(1)(i) (“In calculating the export price (or the constructed export price), the Secretary will deduct the amount of any antidumping duty or countervailing duty which the exporter or producer . . . [p]aid directly on behalf of the importer; or . . . [r]eimbursed to the importer.”). The agency requires importers to file a certification with United States Customs and Border Protection stating whether the importer has been reimbursed or refunded by the manufacturer, producer, seller, or exporter for all or part of the antidumping duties assessed. *Id.* § 351.402(f)(2)(i).

B

This appeal arises out of the Department of Commerce's second administrative review of the existing anti-dumping duty order on hot-rolled steel flat products from Australia, covering a period of review from October 1, 2017 to September 30, 2018. Defendants-Appellees BlueScope Steel (AIS) Pty Ltd., BlueScope Steel Ltd, and BlueScope Steel Americas, Inc. (collectively, BlueScope) are all affiliated parties that comprise the only hot-rolled steel producer and exporter in Australia. BlueScope Steel Ltd (hereinafter, BSL) is the ultimate corporate parent company. BlueScope Steel (AIS) Pty Ltd. (hereinafter, AIS) is a wholly owned subsidiary of BSL and is the actual producer and exporter of BlueScope hot-rolled steel. BlueScope Steel Americas, Inc. (hereinafter, BSA) is the affiliated United States importer. BSL also owns a 50% controlling interest in Steelscape LLC, an affiliated downstream U.S. customer that receives the majority of the imported steel.

For exports of AIS steel that are destined for Steelscape, AIS first invoices BSA, and in a "back-to-back transaction," BSA then invoices the ultimate customer, Steelscape. BlueScope Br. 4. The shipment of the physical merchandise goes directly from AIS to Steelscape.

Prior to the agency's release of its preliminary findings in the 2017–2018 administrative review, Plaintiff-Appellant United States Steel Corp. (hereinafter, U.S. Steel) alleged that BlueScope had reimbursed BSA for the antidumping duties it incurred when importing AIS steel. U.S. Steel argued to the agency—and now argues to us on appeal—that BlueScope engaged in antidumping duty reimbursement by failing to charge BSA a predetermined "formula price" and instead charged a price that accounted for estimated antidumping duties owed by BSA. The "formula price" at issue in this case is housed in a supply agreement between BlueScope entities. Because the parties offer

incompatible interpretations of the Supply Agreement and the entities to which it applies, we present each party's recitation of the underlying facts in turn.

1

BlueScope explains that the Supply Agreement at issue is a "Substrate Supply Agreement" among BSL, BSA, and Steelscape. BlueScope Br. 6. BlueScope states:

The Agreement sets the price that *BSA charges Steelscape* for the merchandise, according to a formula using two published hot-rolled price indices. Article 5.1 of the Supply Agreement uses this formula to determine the price of the purchase order ("PO") that Steelscape submits to BSA. Article 3.5 of the Supply Agreement states that "Steelscape will submit two POs {purchase orders} to BSA for the total amount of HRC {hot-rolled coil} in the Steelscape Order for each supply month . . . [.]". Article 6.1 of the Agreement further sets forth invoice the price [sic] that "BSA will provide to Steelscape." That price is a delivered, duty-paid price—a price that includes both the duties and the cost of delivering the merchandise to Steelscape.

BlueScope Br. 6–7 (internal citations omitted). In sum, BlueScope asserts that while the Supply Agreement controls the invoice price between BSA and Steelscape, it does not set forth the "transfer price" for the transaction between AIS and BSA. Instead, BlueScope reports that it calculates the transfer price between AIS and BSA by starting with the formula price to Steelscape and subtracting the estimated antidumping duties that BSA will owe. To support its explanation of the pricing methodology, BlueScope submitted evidence into the agency record during review, including a questionnaire response discussing the methodology, a copy of the Supply Agreement, and a series of sales traces showing the actual amounts paid by AIS to BSA and then BSA to Steelscape in previous transactions.

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