

United States Court of Appeals for the Federal Circuit

RIMCO INC.,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2022-2079

Appeal from the United States Court of International Trade in No. 1:21-cv-00537-MAB, Chief Judge Mark A. Barnett.

Decided: April 8, 2024

JOHN M. PETERSON, Neville Peterson LLP, New York, NY, argued for plaintiff-appellant. Also represented by PATRICK KLEIN; RICHARD F. O'NEILL, Seattle, WA.

BEVERLY A. FARRELL, Commercial Litigation Branch, Civil Division, United States Department of Justice, New York, NY, argued for defendant-appellee. Also represented by BRIAN M. BOYNTON, CLAUDIA BURKE, PATRICIA M. MCCARTHY, JUSTIN REINHART MILLER; FARIHA KABIR, YELENA SLEPAK, Office of Assistant Chief Counsel, Bureau of Customs and Border Protection, United States Department of Homeland Security, New York, NY; IAN ANDREW

MCINERNEY, Office of the Chief Counsel for Trade Enforcement and Compliance, United States Department of Commerce, Washington, DC.

Before PROST, TARANTO, and HUGHES, *Circuit Judges*.

HUGHES, *Circuit Judge*.

Importer Rimco Inc., appeals the United States Court of International Trade's dismissal for lack of subject matter jurisdiction over an action seeking judicial review of a denied protest. Rimco asserts the Court of International Trade's exclusive subject-matter jurisdiction to review denial of protests pursuant to 28 U.S.C. § 1581(a), or alternatively, residual jurisdiction pursuant to 28 U.S.C. § 1581(i). Because Customs and Border Protection's assessment of countervailing and antidumping duties is not a protestable decision, and because jurisdiction under 28 U.S.C. § 1581(c) would have been available if Rimco had not failed to exhaust the appropriate administrative remedies, we affirm the CIT's dismissal for lack of subject matter jurisdiction.

I

A

Antidumping duties (AD) and countervailing duties (CVD) work to remedy domestic injuries caused by goods imported at unfair prices or receiving countervailable subsidies from foreign governments. *Guangdong Wireking Housewares & Hardware Co. v. United States*, 745 F.3d 1194, 1196 (Fed. Cir. 2014). The U.S. Department of Commerce and the U.S. International Trade Commission are the agencies charged with conducting CVD and AD investigations. 19 U.S.C. §§ 1671, 1673. During these investigations, Commerce determines whether, and to what extent, merchandise imported into the United States is being sold

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at prices below fair value, or benefits from countervailable foreign subsidiaries. 19 U.S.C. §§ 1671d, 1673d.

After concluding an investigation, Commerce determines the appropriate AD and CVD rates required to address any domestic injuries or unfair practices related to certain foreign exporters, producers, or governments. 19 U.S.C. §§ 1671d(c)(1), 1673d(c)(1). These rates can be established for specific entities or on a country-wide basis depending on the source and extent of the harm. 19 U.S.C. §§ 1671d(c)(1)(B), 1673d(c)(1)(B). Congress has supplied Commerce with a statutory scheme that provides methods for establishing AD and CVD rates for individually and non-individually investigated entities, as well as an “all-others” rate based on multiple considerations, including facts available. *See* 19 U.S.C. §§ 1671d(c)(5), 1673d(c)(5), 1677e.

This court has recognized that Commerce has “broad authority to interpret . . . and carry out th[is] statutory mandate.” *Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (Fed. Cir. 1997). However, its methodology must nevertheless be reasonable. *See Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1373 (Fed. Cir. 2013) (quoting “reasonable method” requirement contained in 19 U.S.C. § 1673d(c)(5)(B)).

After Commerce makes final AD and CVD determinations, it publishes the rates in a final order. In accordance with rulemaking under the Administrative Procedure Act (APA) § 3, 5 U.S.C. § 553, Commerce then provides notice of opportunity for interested parties, such as importers, to request and/or participate in administrative review of the final orders. At the close of the notice of opportunity period, Commerce issues liquidation instructions, directing the U.S. Customs and Border Protection (Customs) to assess entries subject to the orders at the final published respective rates.

B

On March 28, 2019, after completing CVD and AD investigations, Commerce published final CVD and AD determinations on certain steel wheels from China. See generally *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 Fed. Reg. 11,744 (Dep't Commerce Mar. 28, 2019) (Final CVD Determination); *Certain Steel Wheels From the People's Republic of China: Final Determination of Sales At Less-Than-Fair-Value*, 84 Fed. Reg. 11,746 (Dep't Commerce Mar. 28, 2019) (Final AD Determination). In its Final CVD Determination, Commerce established an entity rate of 457.10 % for two mandatory respondents based on total adverse facts available, as authorized under 19 U.S.C. § 1677e(b), and an all-others rate of 457.10 %, as authorized under 19 U.S.C. § 1673d(c)(5)(A). See *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 Fed. Reg. at 11,745. Because no companies participated in the AD investigation, Commerce established a China-wide entity rate of 231.08 % for the Final AD Determination. See *Certain Steel Wheels From the People's Republic of China: Final Determination of Sales At Less-Than-Fair-Value*, 84 Fed. Reg. at 11,747.

On May 24, 2019, Commerce issued the AD and CVD orders in a single publication. *Certain Steel Wheels From the People's Republic of China; Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 24,098–24,100 (Dep't Commerce May 24, 2019).

On May 1, 2020, Commerce published a notice of opportunity to allow requests for administrative review of the AD order and CVD order for the periods August 31, 2018, through December 31, 2019, and October 30, 2018, through April 30, 2020, respectively. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 Fed.

Reg. 25,394, 25,396 (Dep't of Commerce May 1, 2020). This notice provided interested parties, with an opportunity to participate in the administrative review process to ensure that their entries from the reviewable time periods were assessed at the proper rates during liquidation. As is relevant to this appeal, Rimco, a North Dakota-based importer and reseller of wheels subject to the orders, is an interested party to which the notice applied. *See* 19 U.S.C. 1677(9)(A) (defining “interested party” to include “the United States importer[] of subject merchandise”). Yet, neither Rimco, nor any other interested party, requested administrative review of any transactions covered by the respective periods of review.

Because no interested party requested administrative review of the AD or CVD orders, Commerce issued liquidation instructions directing Customs to assess entries subject to the orders at the final published rates. During liquidation, Customs then applied the instructed rates when assessing goods subject to the respective orders. Rimco made various consumption entries of goods subject to liquidation in accordance with the AD and CVD orders.

On March 16, 2021, Rimco filed a protest challenging Customs' assessment of AD and CVD on its imported goods as “excessive fines’ in contravention of the Eighth Amendment.” Appellant’s Br. at 5. On March 30, 2021, Customs denied the protest on the basis that “19 U.S.C. [§] 1514 does not authorize protests or petitions against Commerce calculations or findings.” Appellee’s Br. at 8. Rimco then filed an action before the U.S. Court of International Trade (CIT), seeking judicial review of Customs’ denial of protest. Rimco asserted the CIT’s exclusive jurisdiction under 28 U.S.C. § 1581(a), or alternatively, 28 U.S.C. § 1581(i).

The Government moved to dismiss Rimco’s action for lack of subject matter jurisdiction and failure to state a claim. On July 8, 2022, the CIT granted the Government’s motion on jurisdictional grounds and dismissed the action

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