

Slip Op. 07-102

UNITED STATES COURT OF INTERNATIONAL TRADE

CORUS STAAL BV,

Plaintiff,

v.

UNITED STATES,

Defendant,

and

NUCOR CORPORATION and UNITED
STATES STEEL CORPORATION,

Defendants-Intervenor.

Before: Gregory W. Carman, Judge

Court No. 07-00134

[Plaintiff's motion for rehearing and for summary judgment is DENIED.]

July 2, 2007

Step toe & Johnson, LLP (Alice A. Kipel, Richard O. Cunningham, Joel D. Kaufman, and Jamie B. Beaber) for Plaintiff.

Peter D. Keisler, Assistant Attorney General; Jeanne E. Davidson, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice (Claudia Burke); Sapna Sharma, of counsel, International Trade Administration, U.S. Department of Commerce, for Defendant.

Wiley Rein, LLP (Timothy C. Brightbill, Alan H. Price, and Maureen E. Thorson) for Defendant-Intervenor Nucor Corporation.

Skadden Arps Slate Meagher & Flom, LLP (John J. Mangan, Jeffrey D. Gerrish, Robert E. Lighthizer, and Jared R. Wessel) for Defendant-Intervenor United States Steel Corporation.

MEMORANDUM ORDER

Carman, Judge: This action comes before this Court on motion for rehearing and for summary judgment filed by Plaintiff, Corus Staal BV (“Corus”). Corus requests that this Court reconsider its judgment in Corus Staal BV v. United States, 31 CIT ___, Slip Op. 07-90 (June 5, 2007), dismissing the instant action for lack of jurisdiction. (Corus Staal BV’s Mot. for Reh’g and for Summ. J. (“Mot. for Reh’g”).) For the reasons discussed below, this Court denies Corus’s motion for rehearing and for summary judgment.

Rule 59 of the rules of the United States Court of International Trade governs motions for rehearing, also called motions for reconsideration. See USCIT R. 59. “The disposition of a motion for rehearing lies within ‘the sound discretion of the court.’” Demos v. United States, 31 CIT ___, Slip Op. 07-97 at 1 (June 25, 2007) (quoting United States v. Gold Mountain Coffee, Ltd., 8 CIT 336, 336, 601 F. Supp. 212 (1984)). “[T]he purpose of the petition for rehearing [] under the Rules . . . is to direct the Court’s attention to some material matter of law or fact which it has overlooked in deciding a case, and which, had it been given consideration, would probably have brought about a different result.” Ugine & ALZ Belgium, N.V. v. United States, 29 CIT ___, Slip Op. 05-113 at 7-8 (August 29, 2005) (quoting NLRB v. Brown & Root, Inc., 206 F.2d 73, 74 (8th Cir. 1953) (first bracket added, second bracket in quoted case)). Conversely, a motion for reconsideration based solely on the moving party’s dissatisfaction with the trial court’s decision will be rejected. See, e.g., Am. Nat’l Fire Ins. Co. v. United States, 30 CIT ___, Slip Op. 06-136 at 2 (Sept. 7, 2006, errata Oct. 17, 2006).

This Court presumes familiarity with the underlying decision giving rise to Corus’s Motion for Rehearing, Corus Staal BV, Slip Op. 07-90. By way of a reminder, the substantive

issue in Corus Staal was whether Corus was entitled to a refund of antidumping duty deposits made on merchandise entered by Corus between November 1, 2005, through October 31, 2006. Corus argued that because the antidumping duty order covering the merchandise was revoked by Commerce,¹ it was entitled to the antidumping duty deposits; Defendant United States (the “Government”) argued that because the revocation was prospective in nature, Corus was not entitled to a refund on its previously entered merchandise. As stated previously, this Court dismissed Corus’s action for lack of jurisdiction.² See Corus Staal, Slip Op. 07-90 at 21.

In the motion for rehearing, Corus contends that the Government incorrectly argued to this Court that 19 U.S.C. § 3538 (2000) (“Section 129”) requires Commerce to liquidate Corus’s entries with antidumping duties in place. Corus argues that Commerce contradicted the Government in a statement it made, which is not part of the record of this proceeding. Corus quotes Commerce as saying: “that provision [Section 129] does not speak to the effect of a revocation [of an antidumping duty order made] pursuant to Section 129 on prior unliquidated entries” (Mem. of P. & A. in Supp. of Corus Staal BV’s Mot. for Rehearing and for Summ. J. 2 (“Corus’s Mem.”) (quoting Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review, 72 Fed. Reg. 28,676,

¹The antidumping duty order covering Corus’s merchandise was revoked on April 23, 2007, after the merchandise at issue in this case was entered. See Implementation of the Findings of the WTO Panel in US-Zeroing (EC), 72 Fed. Reg. 25,261, 25,261 (Dep’t Commerce May 4, 2007).

²Corus brought the action pursuant to this Court’s residual jurisdictional provision, 28 U.S.C. § 1581(i) (2000). This Court held that, because another jurisdictional provision, 28 U.S.C. § 1581(c), would have been available had Corus followed administrative prerequisites, this Court lacked jurisdiction pursuant to section 1581(i). Corus Staal, Slip Op. 07-90 at 16.

Issues & Decision Mem. at 14 (Dep't Commerce May 15, 2007) (“2004-05 Issues & Decision Mem.”)) (first bracket in original, second bracket added.)

First, this Court expresses its disappointment that Corus did not quote Commerce’s complete sentence, rather than selectively excerpt from it. The complete sentence reads:

That provision [Section 129] does not speak to the effect of a revocation [of an antidumping duty order made] pursuant to Section 129 on prior unliquidated entries; however, the [Statement of Administrative Action] makes clear that such entries remain subject to potential duty liability.

2004-05 Issues & Decision Mem. 14 (emphasis added). When read in its entirety, Commerce’s statement does not conflict with the position that the Government took before this Court. The Government consistently argued that Section 129 does not relieve Corus of antidumping duty liability, which is consistent with Commerce’s statement.

Second, and more importantly, Corus’s argument has no bearing on this Court’s holding in Corus Staal. This Court dismissed Corus’s action for lack of jurisdiction. Corus’s argument regarding the significance of Commerce’s statement goes to the merits of the action, not to whether this Court possesses jurisdiction to decide the merits of the action. Because Corus’s argument regarding Commerce’s statement does not undermine—or even address—the holding of the case, Corus has not presented grounds upon which to grant the motion for rehearing. See Uguine & ALZ Belgium, Slip Op. 05-113 at 8-9 (internal quotation and citation omitted) (motion for rehearing used to “direct the Court’s attention to some material matter of law or fact which it has overlooked in deciding a case, and which, had it been given consideration, would probably have brought about a different result”).

Finally, the additional arguments that Corus does present regarding jurisdiction merely rehash the arguments made during the underlying action. (See Corus’s Mem. 18-23.) Further,

Corus does not point to any manifest error in fact or law committed by this Court in rejecting these arguments in the original proceeding. While it is apparent that Corus disagrees with this Court's interpretation regarding the scope of section 1581(i) jurisdiction, "[a] motion for reconsideration will not be granted merely to give a losing party another chance to re-litigate the case or present arguments it previously raised." Am. Nat'l Fire Ins. Co., Slip Op. 06-136 at 2.

Because these claims set forth no legitimate grounds upon which this Court should reconsider its decision, it is hereby

ORDERED that Corus's motion for rehearing is denied. It is further

ORDERED that Corus's motion for summary judgment is denied.

SO ORDERED.

_____/s/ Gregory W. Carman_____
Gregory W. Carman

Dated: July 2, 2007
New York, NY