

Nucor Corporation, Gerdau Ameristeel Corporation, and Commercial Metals Company v. United States

Court No. 07-00457 (April 14, 2009)

FINAL RESULTS OF REDETERMINATION

PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order from the U.S. Court of International Trade (the Court) in Nucor Corporation, Gerdau Ameristeel Corporation, and Commercial Metals Company v. United States, Court No. 07-00457 (April 14, 2009) (Nucor v. United States). In accordance with the Court's instructions, the Department has recalculated the cost of production for Ekinciler Demir ve Celik Sanayi A.S. and Ekinciler Dis Ticaret A.S. (collectively, "Ekinciler") in the 2005-2006 antidumping duty administrative review. In doing so, we excluded the depreciation on the foreign exchange losses recorded in Ekinciler's melt shop modernization account. As a result, we have recalculated the margin for Ekinciler using these revised production costs.

A. Background

On November 6, 2007, the Department published its final results of the 2005-2006 antidumping duty administrative review. See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part, 72 FR 62630 (Nov. 6, 2007), and accompanying Issues and Decision Memorandum (Final Results). The antidumping duty order subject to this review was issued on April 17, 1997. See Antidumping Duty Order: Certain Steel Concrete Reinforcing

Bars from Turkey, 62 FR 18748 (Apr. 17, 1997). The period of review (POR) covers the period from April 1, 2005, to March 31, 2006.

In the Final Results, the Department imputed an amount for depreciation related to an account listed as “melt shop modernization” in Ekinciler’s books and records, as had been done in prior segments of the proceeding. See Final Results at Comment 6.

In Nucor v. United States, the Court determined that the Department’s Final Results were not supported by substantial evidence on the record, and remanded the issue of imputed depreciation calculated for Ekinciler to the Department. Specifically, the Court directed the Department to redetermine “imputed depreciation for Ekinciler without the amount that currently reflects the foreign exchange losses in the melt shop modernization account.” See Nucor v. United States at 6.

B. Analysis

Pursuant to the Court’s remand, the Department has recalculated Ekinciler’s production costs in accordance with the Court’s instructions. In doing so, as directed by the Court, we excluded the depreciation on undepreciated assets recorded in Ekinciler’s melt shop modernization account. Absent accounting for any depreciation for this large asset, the result is that Ekinciler’s cost of production is lower.

Although the Department has complied with the Court’s order and modified its calculations on remand, we respectfully disagree with the Court’s holding in Nucor v. United States that recalculation of Ekinciler’s cost of production is warranted.¹

Specifically, the Department respectfully disagrees with three of the conclusions underlying the Court’s analysis. First, although the Court found that the evidence on the nature

¹ See Viraj Group, Ltd. v. United States, 343 F.3d, 1371, 1376 (Fed. Cir. 2003).

of the melt shop modernization account at the administrative review was “uncontroverted” (see Nucor v. United States at 5), significant record evidence, including Ekinciler’s own books and records, contradicted Ekinciler’s description of the nature of this asset, and the domestic industry consistently challenged the evidence put forward by Ekinciler throughout the entire proceeding.

Second, the Court described the Department’s policy as “treat{ing} all foreign exchange losses as an expense in the year realized” when a company, as the result of severe economic conditions, has capitalized its foreign exchange gains and losses in its normal books and records in accordance with the home country’s generally accepted accounting principles (see Nucor v. United States at 5). We respectfully disagree with this description of our policy. The Department never had the opportunity to explain its policy, as described in DRAMs from Korea,² or show that it applied this policy in the administrative review at issue because Ekinciler did not make this argument in the underlying proceeding. For this reason, although the Court found that the Department had not “justifiably explained its departure from such a policy in this instance,” the Department was unable to do so because Ekinciler failed to exhaust its administrative remedies. See Nucor v. United States at 5.

Finally, although the Court concluded that the “only apparent rationale” for the Department’s imputing of depreciation on the melt shop modernization account was Ekinciler’s “inflated” balance sheet (see Nucor v. United States at 5), the Department’s intent for such imputation, as explained in the Final Results, was to properly match costs to the periods that benefitted from such costs. Ekinciler received a benefit during the POR from the capitalization

² See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 66 FR 52097 (Oct. 12, 2001) (DRAMs from Korea) and accompanying Issues and Decision Memorandum at Comment 1 (imputing depreciation while allowing for the amortization of foreign exchange losses).

of these expenses as an asset in its financial statements. See Final Results at Comment 6. The capitalization of this asset helped Ekinciler generate revenues over the periods subsequent to the 2001 financial crisis, including the POR, impacting Ekinciler's cost of production. Thus, the Department's imputation of depreciation was intended to match these benefits to Ekinciler's costs during the POR.

C. Conclusion

Consistent with the Court's remand order, the Department has recalculated Ekinciler's antidumping margin exclusive of the imputation of depreciation. The Department therefore assigns a final dumping margin of 0.11 percent to Ekinciler.

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for Antidumping and Countervailing Duty Operations

(Date)