21-08.pdf (uscourts.gov)

Slip Op. No. 21-8 UNITED STATES COURT OF INTERNATIONAL TRADE

PRIMESOURCE BUILDING PRODUCTS, INC., Plaintiff, v. UNITED STATES, et al., Defendants.

Before: Timothy C. Stanceu, Chief Judge Jennifer Choe-Groves, Judge M. Miller Baker, Judge Court No. 20-00032 OPINION AND ORDER [Granting defendants' motion to dismiss plaintiff's amended complaint as it pertains to all claims therein except the claim stated as Count 2; denying the motion to dismiss as to the claim in Count 2 but also denying plaintiff's motion for summary judgment.

Dated: January 27, 2021

……

A court reviewing a challenge to Presidential action taken pursuant to authority delegated by statute does so according to a standard of review that is highly deferential to the President. *"For a court to interpose, there has to be a clear misconstruction of the governing statute, a significant procedural violation, or action outside delegated authority*." P. 8.

PrimeSource's fourth claim, that Section 232 is impermissible under the U.S. Constitution as an impermissibly broad delegation of legislative authority from Congress to the Executive Branch, is foreclosed by the decision of the U.S. Supreme Court in Federal Energy Admin. v. Algonquin SNG, Inc., 426 U.S. 548 (1976). Therefore, it too must be dismissed. P. 16.

Plaintiff's claim in Count 2 is that Proclamation 9980 is invalid as untimely because the President's authority to adjust imports of a new set of products made of steel (i.e., the "derivatives") had expired. P.18

Congress next made major changes to Section 232 in the 1988 amendments, which resulted in the current Section 232.13 Among a number of new procedural requirements, including requirements for reporting to the Congress on actions taken or declined to be taken, the 1988 amendments imposed, for the first time, time limits on the exercise of discretion by the President. These were the aforementioned 90-day time period in which the President is to "determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives . . . ," 19 U.S.C. § 1862(c)(1)(A)(ii), and the 15-day time period in which the President, if determining "to take action to adjust imports of an article and its derivatives," is directed to "implement that action," id. § 1862(c)(1)(B). Pp. 30-31.

As amended, the statute expressly requires the President, "[w]ithin 90 days after receiving a report submitted under subsection (b)(3)(A)," (i.e., the report the Commerce Secretary is to issue within 270 days of the initiation of an investigation under 19 U.S.C. § 1862(b)) to "determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives . . . ." Id. § 1862(c)(1)(A)(ii) (emphasis added). Section 232(c)(1)(B) provides that "[i]f the President determines . . . to take action to adjust imports of an article and its derivatives, the President shall implement that action by no later than the date that is 15 days after the day on which the President determines to take action . . . ." P. 31.

To the contrary, the 90- and 15-day time limitations in Section 232(c)(1) expressly confine the exercise of the President's discretion regardless of whether the President determines to adjust imports only of the "article" named in the Secretary's report or, instead, to adjust imports of the "article and its derivatives." See 19 U.S.C. § 1862(c)(1). P. 32

Where a statute creates an exception to a general rule (as Section 232(c)(3) does in creating an exception to the time limitations of Section 232(c)(1)), such exception is to be read narrowly and not interpreted to apply where Congress did not expressly provide for it. P. 36.

In summary, the action taken by Proclamation 9980 to adjust imports of derivatives was not implemented during the 105-day time period set forth in § 1862(c)(1), if that time period is considered to have commenced upon the President's receipt of the Steel Report. The President's having characterized the articles affected by Proclamation 9980 as "derivatives" of the steel products affected by Proclamation 9705 is, therefore, insufficient by itself to support a conclusion that Proclamation 9980 was timely according to Section 232(c)(1). P. 45.

The President's characterization of the articles affected by Proclamation 9980 as derivatives of the articles affected by Proclamation 9705 is insufficient, by itself, to support a conclusion that the challenged decision satisfied the time limitations in Section 232(c)(1), and Congress did not intend for those time limits to be merely directory. P. 50.

ORDERED that plaintiff's motion for summary judgment be, and hereby is, denied with respect to the claim stated in Count 2 of the amended complaint; it is further

Timothy C. Stanceu, Chief Judge Jennifer Choe-Groves, Judge

Dated: January 27, 2021 New York, New York