



CSUSTL FILES AMICUS CURIAE BRIEF WARNING SUNPREME DECISION CREATES MEANS FOR EVADING PAYMENT OF LAWFUL AD/CVD DUTIES

THE COMMITTEE TO SUPPORT U.S. TRADE LAWS FOR IMMEDIATE RELEASE:

(Washington, DC, August 12) – CSUSTL filed earlier today an amicus brief in support of the government’s petition for rehearing and/or rehearing en banc at the Court of Appeals for the Federal Circuit (CAFC) in the *Sunpreme Inc. v. US* case (Ct. No. 18-1116). The CAFC rejected Sunpreme’s arguments that the order did not cover its solar modules and upheld Commerce’s finding in the scope ruling in favor of the petitioner. But the CAFC also found the US Customs and Border Protection (CBP) lacked authority to interpret the ambiguity in a duty order so as to place merchandise within its scope when it is unclear from the plain language of an AD/CVD order and a factual inspection of the product. This finding has significant implications for the enforcement and collection of AD/CVD duties in hundreds of trade remedy cases.

Chief Judge Prost, one of the judges from the three-judge CAFC panel, issued a separate opinion, dissenting-in-part from the majority. She found that the Court’s decision limits CBP’s ability to regulate imports and to protect the revenue, thereby thwarting the purpose of the trade remedy laws. Furthermore, importers are encouraged to delay or to avoid requesting a scope ruling from Commerce as a means of evading the payment of the duties. Prost argued Sunpreme is rewarded “for its delay in filing a request for a scope inquiry”. CSUSTL believes the Prost opinion provides the correct understanding of the law, commending the Chief Judge for the clarity provided by the dissent. Prost recognized that CBP and Commerce have no burden to assist Sunpreme by clarifying the language of an order when ambiguities are alleged. Rather, Congress placed the legal responsibility fully on the importer to use “reasonable care” in making entry.

CSUSTL Executive Committee Chairman Tim Brightbill, of Wiley Rein LLP, warned that the decision “may allow U.S. importers to claim their products are non-subject merchandise prior to issuance of formal scope rulings from Commerce on the product – whenever there is arguably any ambiguity as to whether the scope language applies, CBP may be unable to collect duties in such instances.” Failure to collect duties would significantly weaken the effectiveness of the antidumping and countervailing duty laws.

The CSUSTL filing strongly supports the United States stating that the issue presented in the government’s petition for rehearing is fundamental to the effectiveness of the U.S. trade laws, arguing that the panel’s opinion curtails the authority of CBP to effectively enforce the nation’s trade remedy laws. The decision will have the effect of allowing imports of goods embraced by existing trade remedy orders to escape duties, to the detriment of the United States’ revenue and the domestic industries that such duties are meant to benefit.

The Committee to Support U.S. Trade Laws (CSUSTL) is a national organization of companies, trade associations, labor unions, law firms and individuals located in all 50



states of the nation and is committed to preserving and enhancing U.S. trade laws and supporting trade policies that benefit the United States-based productive economy. CSUSTL consists of 423 companies and organizations representing 167 industries, including manufacturing, technology, agriculture, mining, energy, and services. We are dedicated to ensuring that the laws against unfair trade are not weakened through legislation or policy decisions in Washington, DC, in international negotiations, or through dispute settlement at the World Trade Organization (WTO) and elsewhere.

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