Federal Court of Appeal | Cour d'appel fédérale

Date: 20250205

Docket: A-226-24

Citation: 2025 FCA 29

CORAM: **STRATAS J.A.**
GOYETTE J.A.
HECKMAN J.A.

ÇOLAKOĞLU METALURJI A.S., İÇDAS ÇELIK ENERJI TERSANE VE ULAŞIM A.Ş., EKINCILER DEMIR VE ÇELIK SANAYI A.Ş., KROMAN ÇELIK SANAYII A.Ş., KAPTAN DEMIR ÇELIK ENDÜSTRI VE TICARET A.Ş., AND TURKISH STEEL EXPORTERS' ASSOCIATION

Appellants

and

ALTASTEEL INC., ARCELORMITTAL LONG PRODUCTS CANADA, G.P., GERDAU AMERISTEEL CORPORATION, JEBSEN & JESSEN METALS GMBH, AND MAX AICHER (NORTH AMERICA) INC.

Respondents

Heard at Ottawa, Ontario, on February 5, 2025.

Judgment delivered from the Bench at Ottawa, Ontario, on February 5, 2025.

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.

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BETWEEN:

ÇOLAKOĞLU METALURJI A.S., İÇDAS ÇELIK ENERJI TERSANE VE ULAŞIM A.Ş., EKINCILER DEMIR VE ÇELIK SANAYI A.Ş., KROMAN ÇELIK SANAYII A.Ş., KAPTAN DEMIR ÇELIK ENDÜSTRI VE TICARET A.Ş., AND TURKISH STEEL EXPORTERS' ASSOCIATION

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on February 5, 2025).

STRATAS J.A.

[1] Before us is an appeal from the judgment of the Federal Court (*per* Turley J.): 2024 FC 831. The Federal Court struck the appellants' application for judicial review.

[2] In their application, the appellants sought to quash the results of a Canada Border Services Agency reinvestigation under the *Special Import Measures Act*, R.S.C. 1985, c. S-15. In that reinvestigation, the Agency determined the normal values for future shipments of steel rebar from the Republic of Türkiye.

[3] The Federal Court held that Agency reinvestigations are not reviewable under section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. In its view, reinvestigations are akin to advance rulings that do not affect legal rights, impose legal obligations or cause prejudice and, thus, are not reviewable under authorities such as *Air Passenger Rights v. Canada (Transportation Agency)*, 2020 FCA 92 at para. 22, *Canada (Attorney General) v. Democracy Watch*, 2020 FCA 69, [2020] 3 F.C.R. 623 at para. 19 and *Air Canada v. Toronto Port Authority*, 2011 FCA 347, [2013] 3 F.C.R. 605 at paras. 28–29. Only when the goods are actually imported into Canada might anti-dumping duties be imposed. In other words, whether we are speaking of importers or exporters, the "rubber does not hit the road" until a decision is made at the time of importation.

[4] We are reviewing the Federal Court's decision to strike the application for judicial review because of a preliminary defect or preliminary objection. We are not reviewing the decision of an administrative decision-maker. Thus, the normal appellate standard applies. See *Budlakoti v. Canada (Citizenship and Immigration)*, 2015 FCA 139, 473 N.R. 283 at paras. 37–39; *Long Plain v. Canada*, 2015 FCA 177, 475 N.R. 142 at paras. 88–91; *Apotex v. Minister of Health*, 2018 FCA 147, 157 C.P.R. (4th) 289 at paras. 57–61; *Canada (Attorney General) v. Jodhan*, 2012 FCA 161, [2014] 1 F.C.R. 185 at para. 75.

[5] The appeal must be dismissed. The appellants have not identified an error of law or palpable and overriding error on the part of the Federal Court. In fact, most of the appellants' submissions repeat the ones made in the Federal Court and the Federal Court fully and satisfactorily rejected them. We agree with the reasons of the Federal Court and adopt them as our own.

[6] *Prudential Steel Ltd. v. Bell Supply Company*, 2016 FCA 282, [2017] 3 F.C.R. 165 at paras. 12–14, 22 and 29 fully supports the Federal Court's judgment. There, this Court held that the Agency's ruling (of the sort we have here) is akin to an advance ruling that does not affect legal rights, impose legal obligations or cause prejudice to anyone, whether importers or exporters. The Agency's reinvestigation is "nothing more than non-binding opinion", essentially communicating ahead of time how the Agency intends to determine the normal values under paragraph 56(1)(b) of the *Special Import Measures Act* at the time of import: *Prudential Steel* at para. 26. The impact crystallizes only at the time of import when a formal decision under this legislative regime is made. And that formal decision does not have to follow the earlier non-binding opinion.

[7] However, in this case, the appellants nevertheless invite us to reach a result different from *Prudential Steel*. In effect, they submit that it should not be followed.

[8] This Court must follow its previous authorities unless later Supreme Court authority has overtaken them, they can be distinguished on a principled basis, or they are "manifestly wrong" within the meaning of *Miller v. Canada (Attorney General)*, 2002 FCA 370, 220 D.L.R. (4th)

149: see also *Innovative Medicines Canada v. Canada (Attorney General)*, 2022 FCA 210 at para. 27 and *R. v. Sullivan*, 2022 SCC 19, 413 C.C.C. (3d) 447. “Manifestly wrong” includes the earlier court “overlook[ing] a relevant statutory provision, or a case [directly on point] that ought to have been followed”: *Miller* at para. 10.

[9] The appellants submit that the Federal Court failed to appreciate the effect of the normal values determined in an Agency reinvestigation. They argue that the reinvestigation prejudiced them by causing a loss of revenue and the *Special Import Measures Act* gives them no right of redress against this.

[10] The same can be said for many preliminary or interim steps taken by other agencies. For example, a decision by the Canada Revenue Agency to audit the tax return of a business, a decision of the Competition Bureau to conduct an investigation against a business for misleading advertising, or a decision by the Canadian Radio-television and Telecommunications Commission to investigate a broadcaster’s compliance with a broadcasting licence might cause some to worry about the possible financial impact on the business. In response to these, share prices might fall and lenders might worry.

[11] But absent the sort of exceptional circumstance (proven by admissible evidence) where the rare administrative law remedy of prohibition is available—and its availability in the face of the sort of comprehensive legislative regime we have here is unclear—none of these preliminary or interim steps create the sort of immediate, certain and final impact on legal rights, legal obligations or practical prejudice that triggers a right to dash off to a judicial review court: see

the authorities in paragraph 3, above. This standpoint is also supported by all of the rationales supporting the near-absolute rule against judicial reviews of interlocutory or interim administrative decisions: *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61, [2011] 2 F.C.R. 332. As well, the evidence before us falls well short of the sort of specific and cogent evidence we need to justify the extraordinary and rare intervention of the Court by way of prohibition. The evidence goes no further than describing the general practices and routines of the Agency as set out in an Agency handbook. We have no evidence as to how these procedures actually operate in practice.

[12] The appellants rely on certain cases predating *Prudential Steel*. We consider that *Prudential Steel*, as the later authority, is the controlling authority that binds us in this case. They also rely on isolated words in the Supreme Court's decision in *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607, 71 N.R. 338. We note that *Finlay* was a case on the sufficiency of an applicant's interest to have standing to bring a judicial review. It has no relevance to the concerns in this case—lack of immediate, certain and final impact on the affected party and prematurity.

[13] We also note that the appellants' submissions, if accepted, would run counter to the legislative scheme of the *Special Import Measures Act.* In this case, there is no constitutional challenge to any provisions of the Act, so we must deal with the Act as written. The Act contemplates that the Agency will have broad administrative flexibility to estimate future normal values under section 96, normal values are not determined until importation, and challenges to such determinations, whether by importers, exporters or others directly affected by the decision,

must be made under the redetermination and appeal provisions in sections 57–62. The legislative regime does give an "exporter" or "a person who deems himself aggrieved" (which could include affected exporters) rights in the legislative regime, which suggests that Parliament turned its mind to the standing of exporters to launch reviews and when they can do so: see, *e.g.*, ss. 58(1.1) and 61(1).

[14] The appellants' submissions, if accepted, would undermine this orderly and escalating series of reviews of determinations that culminate in an appeal to the Canadian International Trade Tribunal and, later, an appeal to this Court on a question of law. A judicial review of the sort attempted here would run roughshod over this legislative scheme.

[15] That we cannot permit. Parliament passed this legislative scheme. Parliament's legislative intent is the "polar star" of judicial review: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 4 S.C.R. 653 at para. 33. This reflects an elementary but very important point. Courts are in no different position from the public they serve: they too must follow the law.

[16] Therefore, we will dismiss the appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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