



THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

19 September 2018

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New Zealand Steel Limited v Minister of Commerce and Consumer Affairs [2018] NZHC 2454

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The international trade regime to which New Zealand is a party is premised on the desirability of free trade. That regime permits countries to impose duties on imports when New Zealand industries are injured by unfair competition in the New Zealand domestic market. They may do so when goods are subsidised by the government of the exporting country and that subsidy causes material injury to the New Zealand producers of like goods. Any duty imposed by New Zealand cannot be more than the amount of the subsidy.

The Dumping and Countervailing Duties Act 1988, now called the Trade (Anti-dumping and Countervailing Duties) Act 1988, is the legislation under which such action can be taken. The Act enables New Zealand to apply duties in accordance with its international obligations as a party to the WTO Agreement.

The Minister of Commerce and Consumer Affairs must first determine (1) whether imported goods are being subsidised by the foreign government; and (2) whether that subsidy has caused or is causing material injury to New Zealand producers of the goods. If that determination is made, the Minister may impose a duty.

This case concerned an application by New Zealand Steel Ltd (NZ Steel) under the Act. NZ Steel produces a range of steel products at its Glenbrook site. One of those products is galvanised steel coil. It is the only producer of this product in New Zealand. It has the major share of the New Zealand market. It competes with imported galvanised steel coil from other countries including China.

NZ Steel’s application contended imported galvanised steel coil from China was being subsidised by the Chinese government and this was causing it material injury. In support of its application it referred to

evidence from other jurisdictions which had determined that steel products imported from China were subsidised. It asked the Minister to impose duties on Chinese imported galvanised steel coil.

In September 2016 the Ministry of Business, Innovation and Employment (MBIE) agreed to investigate whether the goods were being subsidised and whether this was causing material injury to NZ Steel. Following this investigation, MBIE advised the Minister that Chinese galvanised steel coil was being subsidised but only to a minimal level. It said this meant there was no material injury to NZ Steel. Following that advice, on 5 July 2017 the Minister determined not to impose duties on Chinese galvanised steel coil imports.

NZ Steel applied for judicial review of the Minister's decision. The judicial review principally concerned MBIE's investigation and advice to the Minister about the level to which the Chinese goods were subsidised. It contended that errors in this advice meant the Minister's decision was inconsistent with the Act and therefore unlawful.

There were two main grounds for NZ Steel's judicial review:

- (a) The first concerned the test for deciding whether banks providing loans, or entities supplying inputs such as hot rolled coil, to the Chinese producers of galvanised steel coil qualified as "government". MBIE's advice was that they did not, which meant that any benefits the Chinese producers received from the banks or entities would not qualify as subsidies. NZ Steel contended MBIE's advice applied the wrong law to decide this issue.
- (b) The second concerned the facts on which the Minister could make her determination when the Chinese Government and producers had provided only limited information during the investigation. NZ Steel contended the findings of overseas investigations, which had found that the Chinese Government had subsidised steel products, provided relevant evidence and MBIE's advice to the Minister had wrongly discounted these findings.

The High Court has found in favour of NZ Steel on both these points. It has quashed the Minister's decision and directed that it be reconsidered.

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