

A Hard Lesson Learned: What *Capella v. United States* Teaches Us

On January 4th, 2018, the United States Court of Appeals for the Federal Circuit reaffirmed the decision of the United States Court of International Trade in regard to *Capella Sales & Services LTD v. United States, Aluminum Extrusions Fair Trade Committee*. In its affirmation, the court decision highlighted the importance of importers staying current with countervailing duty (CVD) legislation and Timken notices.

Background: The United States Department of Commerce is empowered to impose CVD's on imported goods when they find a country is directly or indirectly subsidizing a given good. Under this authority, a 2010 investigation by the Department of Commerce found the People's Republic of China (PRC) guilty of said subsidies for aluminum extrusions and assessed an all-others rate CVD of 374.15%. Numerous aluminum importers challenged this CVD in the Court of International Trade ("CIT") in *MacLean-Fogg Co. v. United States*. The CIT ruled in favor of the importers, which resulted in a new all-others rate of 7.37% for imports of aluminum extrusions from the PRC. However, Capella was not a party to this legislation.

Following the CIT's decision, the Department of Commerce issued a Timken notice notifying the public that the court's decision differed from its original final determination. As a result of this notice, some importers requested and received an administrative review of 2011 and 2012 entries subject to Commerce's original determination. However, Capella never requested administrative review for its entries.

Considering that Capella's entries were not enjoined by the court due to legislation and they did not request an administrative view within the appropriate period, Capella was charged the original CVD of 374.15%. This case was the final failure in their attempt to avoid payment.

The Court of Appeals reaffirmation of the Capella decision upholds the status quo in regard to CVD's. Importers must stay up to date on current legislation. If they do not join legislation, they must file for an administrative review within the proper time period. Simply attempting to benefit retroactively without said actions will not fly, as Capella roughly discovered. Importers have plenty of time to join legislation and request administrative reviews. They should be considered with the utmost priority as they can often result in significant savings.

Source:

<https://law.justia.com/cases/federal/appellate-courts/cafc/16-2649/16-2649-2018-01-04.html>
https://www.cit.uscourts.gov/SlipOpinions/Slip_op16/16-72.pdf

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