

Feds Say Recent Commerce Ruling Moots Aluminum Duty Suit

By **Grace Dixon**

Law360 (November 2, 2021, 4:34 PM EDT) -- The federal government has asked the Court of International Trade to toss an importer's suit seeking the U.S. Department of Commerce's answer on whether Chinese aluminum sheet duties apply to its imports, saying a recent decision moots the suit.

Commerce's October finding that Valeo North America's aluminum imports fall under the scope of anti-dumping and countervailing duties levied on the Chinese goods leave the CIT without jurisdiction to consider claims that the agency unnecessarily dragged its feet, according to a motion to dismiss filed by the federal government on Monday.

"Commerce's final scope ruling constitutes final agency action and renders any challenge to Commerce's failure to issue a scope ruling or to initiate a formal scope inquiry moot," the federal government said. "Accordingly, Valeo's action should be dismissed for lack of subject-matter jurisdiction."

Valeo filed suit at the CIT in August after Commerce rejected multiple requests for a ruling on whether its imports of heat-treated aluminum sheet fall within the scope of the levies. Commerce also issued multiple timeline extensions while it reviewed technical information submitted by the auto parts supplier.

The supplier's suit sought to force a decision from Commerce and characterized the multiple extensions as unlawful.

But on Monday, the federal government argued that an Oct. 15 decision from Commerce revokes the CIT's jurisdiction because the matter is no longer "a live controversy."

The federal government added that the decision also moots Valeo's complaints that multiple extensions issued before the eventual ruling violated a 45-day regulatory deadline without good cause because they were contingent on Commerce's continued inaction.

"The true nature of Valeo's action seeks to compel agency action on its scope ruling request, and Valeo's other claims are peripheral to the controversy," the federal government said.

Daniel Cannistra, counsel to Valeo, told Law360 that the company plans to oppose the government's motion to dismiss.

"We requested a scope ruling over one and a half years ago, and Commerce is required to issue a ruling

or initiate a formal proceeding within 45 days," Cannistra said. "Commerce still has not issued a lawful scope ruling."

The government argued that Valeo can refile a suit under another provision of Section 1581 of the U.S. Code, but that the statute under which its current suit is looking for relief can't be used to circumvent anti-dumping or countervailing duty determinations.

"Now that Commerce has issued and sent its final scope ruling determination as to whether the product imported by Valeo is within the class or kind of merchandise described in the orders, Valeo may pursue claims related to the final scope ruling properly invoking the Court's § 1581(c) jurisdiction," the federal government said.

The federal government declined to comment on Tuesday.

Valeo is represented by Daniel J. Cannistra and John Anwesen of Crowell & Moring LLP.

The federal government is represented by Kyle S. Beckrich, Brian M. Boynton, Jeanne E. Davidson and Reginald T. Blades Jr. of the U.S. Department of Justice's Civil Division and Leslie M. Lewis of the U.S. Department of Commerce.

The case is Valeo North America v. United States, case number 1:21-cv-00426, in the U.S. Court of International Trade.

--Editing by Dave Trumbore.