

Spanish Co. Sues US Over Harsh Duty For 3-Days-Late Filing

By Kyle Jahner

Law360, Washington (July 12, 2017, 1:39 PM EDT) -- A Spanish company on Tuesday sued the U.S. Department of Commerce in the U.S. Court of International Trade in an effort to void a costly decision stemming from the company's ex-lawyer filing a questionnaire three days late during a review of anti-dumping duties on Spanish stainless steel bar.

Sinedor Aceros Especiales SL challenged its new anti-dumping rate of 62.85 percent based on adverse facts available, or the most negative data on record, because its attorney submitted a questionnaire on Dec. 22 rather than Dec. 19. It paid a rate of zero the year before.

Commerce rejected several efforts to mitigate the error before issuing its final results on June 26, but Sinedor's complaint said that Commerce has treated similar cases differently and that the company shouldn't be punished for a small mistake for which it immediately fired its counsel.

"Plaintiff respectfully requests that this court hold that the final results are unsupported by substantial evidence and are otherwise not in accordance with law [and] remand this matter to Commerce for disposition consistent with the final order of this court," the complaint said.

The review applies to the period from March 2015 through February 2016. Sinedor, which formerly did business as Gerdau Aceros Especiales Europa SL, said that the government wrongly used the missed deadline to disregard all data and factual information it submitted. Sinedor also noted that the lawyer met all other deadlines and Commerce already had everything it needed, as the questionnaire at issue didn't ask for anything not already on the record. It called the adverse facts available determination an "abuse of discretion."

The lawyer who filed late — unbeknownst to Sinedor — had been warned by Commerce nearly two years prior that it would not accept future late filings after a late submission for a different client, according to a case brief Sinedor filed to Commerce in April. The brief said that Commerce had been punitive, and failed to balance the minor error and minimal burden on Commerce against interests of accuracy and fairness. The brief said that the result was also inconsistent with Commerce's handling of in similar cases and said that Sinedor acted quickly to correct the error.

But Commerce still applied adverse facts available, a measure designed to prevent companies from being rewarded for withholding information and to encourage compliance by making the alternative unappealing.

The complaint also took issue with Commerce’s alleged failure to grant an extension that the original lawyer requested on Dec. 20. It said its then-counsel, which it replaced “as a prophylactic measure” within days after the error, had been “diverted by filing two other lengthy submissions on Dec. 19.” But Commerce determined that the representation change was moot since it occurred after the deadline, and also said that “difficulties inherent in preparing questionnaire responses in multiple cases” did not “rise to the level of an unexpected event.”

The complaint protested Commerce’s rejection of a case brief Sinedor filed to Commerce in April because it included new factual information — namely, a ruling Commerce made in March that Sinedor said undercut Commerce’s rejection of its questionnaire. Commerce required Sinedor to refile its case brief without reference to the case, in which the complaint said Commerce had declined to reject a similar untimely filing because of counsel’s previous untimely filings for a different client.

Counsel for Sinedor was not immediately available to comment on Wednesday. The government does not comment on pending litigation.

Sinedor is represented by Sydney H. Mintzer of Mayer Brown LLP.

Counsel information for Commerce was not immediately available on Wednesday.

The case is Sinedor Aceros Especiales (FKA Gerdau Aceros Especiales Europa SL v. United States, case number 17-00176, in the Court of International Trade. The trade case is Stainless Steel Bar from Spain, case number A-469-805, before the International Trade Association.

--Editing by Stephen Berg.