SHOULD THE FEDERAL CIRCUIT TAKE A “HARD LOOK” AT INTERNATIONAL TRADE CASES IN THE 1990s?

JAMES R. CANNON, JR.*

TABLE OF CONTENTS

Introduction ................................................ 1093
I. Deference in Interpreting the Unfair Trade Laws but Not the Tariff Schedules ........................................ 1095
II. A Harder Look at Trade Cases .............................. 1098
III. A Principled Basis for Closer Scrutiny .................. 1106
Conclusion ................................................ 1111
Appendix ................................................... 1113

INTRODUCTION

Traditionally, the Federal Circuit has deferred to agency discretion in interpreting the antidumping1 and countervailing duty laws,2 but not in interpreting the customs laws.3 Since its creation in 1982, the Federal Circuit has tested agency interpretations of the antidumping and countervailing duty laws against a standard of “reasonableness;” in practice, that has usually meant deference to the agencies’ interpretations.4 In fact, with respect to interpretations of


4. See 5 K. Davis, ADMINISTRATIVE LAW TREATISE § 29:1, at 332 (2d ed. 1984) (defining reasonableness standard and describing its application). A 1987 review of Federal Circuit decisions found that the Federal Circuit did not reverse the Court of International Trade (ITC) in any case in which the lower court upheld an agency’s decision. Bar shefsky & Firth, International Trade Decisions of the United States Court of Appeals for the Federal Circuit During the Year 1987, 37 AM. U.L. REV. 1167, 1168 (1988). Similarly, in 1988, several of the most significant cases decided by the Federal Circuit were based on deference to agency practices. Schroeder,
the law that it administers, the International Trade Commission (ITC) has only been reversed by the Federal Circuit in a single case since 1980. Furthermore, the ITC has never lost a challenge under the substantial evidence standard of review.

By contrast, the Federal Circuit traditionally and in 1990 has interpreted the customs laws largely without reference to the agency's interpretation. Surprisingly, in 1990, the Federal Circuit's decisions with respect to the antidumping and countervailing duty laws suggest a similar "hard look" at agency interpretations of the statutes. Between January and December 1990, the court decided thirty cases appealed from the Court of International Trade involving antidumping, countervailing duty, and customs matters. The Court of International Trade had affirmed the agency in eighteen of the thirty cases. Of those eighteen cases, however, the Federal Circuit reversed both the agency and the lower court in six cases. Of the twelve cases in which the Court of International Trade overturned the agency, the Federal Circuit reversed the lower court and affirmed the agency in only three instances.

Although there are admittedly few cases in 1990 upon which to base a prediction, it does appear that a trend is emerging in the court's approach to judicial review of agency interpretations of the.


6. See generally Tardon Corp. v. United States Int'l Trade Comm'n, 831 F.2d 1017, 1019 (Fed. Cir. 1987) (requiring that appellate review of ITC determinations apply "substantial evidence" standard); 19 U.S.C. § 1516a(b)(1)(B) (1988) (stating in pertinent part, "The court shall hold unlawful any determination, finding, or conclusion found . . . (B) . . . to be unsupported by substantial evidence on the record, or otherwise not in accordance with law").

7. A "hard look" approach was originally coined to describe the level of judicial scrutiny applied by the D.C. Circuit in the 1970s. See generally Greater Boston Television Corp. v. F.C.C., 444 F.2d 841, 850-53 (D.C. Cir. 1970) (finding judicial scrutiny of FCC licensing decision showed reasonable supervisory vigilance and was necessary to ensure that agency took "hard look" at issues presented), cert. denied, 403 U.S. 923 (1971); Environmental Defense Fund, Inc. v. Ruckelshaus, 439 F.2d 584, 596-98 (D.C. Cir. 1971) (invalidating administrative decision made by Secretary of Agriculture based on his failure to include adequate information or evidentiary justification); Davis, supra note 4, § 29:1, at 335-36 (describing varying applications of "hard look" doctrine); Note, Deregulation and Hard Look Doctrine, 1983 Sup. Ct. Rev. 177, 210-12 (1983) (claiming hard look review was designed to create highly structured decision making in order to avoid political considerations).

8. See generally Appendix (listing international trade decisions by court between January 1 and November 30, 1990, and indicating in each case whether agency was overturned by CIT and whether decision withstood appeal). It should be noted that appeals from decisions of the ITC under section 337 of the Tariff Act of 1930 (amended as section 1482(d)), are taken directly to the Federal Circuit and do not involve review by the CIT. There were only four such appeals decided during 1990. The agency prevailed in three of the four cases.
international trade statutes. There are sound policy reasons, embodied in the legislative history of each statute, for the court to take a harder look. Not the least of these are the emerging indications that the Commerce Department in particular intends to speed up its own review process, potentially at the expense of fairness in its results. The court in the 1990s should fulfill its role as it was intended by Congress and it should provide the lower court with express guidance concerning the standard of judicial scrutiny that is to be employed.

I. DEFERENCE IN INTERPRETING THE UNFAIR TRADE LAWS BUT NOT THE TARIFF SCHEDULES

In the past, the Federal Circuit applied a highly deferential approach to administrative interpretations under Title VII of the Tariff Act of 1930. Even before the Supreme Court in *Chevron, U.S.A. Inc. v. Natural Resources Defense Council* held that agency interpretations should be measured against a "reasonableness" standard, the Federal Circuit had applied a very deferential standard of review. For example, in *Smith-Corona Group v. United States*, the Federal Circuit found that the antidumping law "does not expressly limit the exercise of the Secretary's authority...nor does it include precise standards or guidelines to govern the exercise of that authority." In addition, although recognizing that the statute "places primary reliance" on value-based adjustments, the court upheld the Secretary's interpretation of a regulation that reduced value to a secondary consideration.

In *Smith-Corona* and subsequent cases, the court also applied a lib-
eral "abuse of discretion" test to the agency determinations. In 1985, in the complicated area of adjustments to the antidumping duty calculation, which was the subject of Smith-Corona, the court in Consumer Products Division v. United States stated that the administering agency, in this case, the Commerce Department, was the "master of the subject." In 1986, in American Lamb Co. v. United States, the Federal Circuit expressly adopted the approach of the Supreme Court in Chevron, holding that a "court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation."

Consistent with this precedent, in 1990, the Federal Circuit, upon identifying a congressional delegation of authority to an agency, such as the ITC, deferred to the agency interpretations of the Tariff Act of 1930. Thus, for example, in Avesta AB v. United States, the court affirmed the decision of the International Trade Commission not to initiate a review of the antidumping duty order on Swedish stainless steel plate on the grounds that Congress had delegated the decision to initiate such review to the Commission. The court relied upon the absence of any specific standard in the statute for the initiation of review and the lack of any guidance for the Commission in the legislative history. This approach follows the formula of Smith-Corona and of Chevron.

Similarly, in reviewing the Customs Service's construction of the

adjusting antidumping duties, Secretary did not abuse authority by relying primarily on cost to make adjustments.

15. In Smith-Corona, the court found that the statute gave discretion to the agency and that the Commerce Department "did not abuse that discretion," even though its regulation achieved the opposite effect intended by the statutory language. Smith-Corona, 713 F.2d at 1037; see also Georgetown Steel Corp. v. United States, 801 F.2d 1308, 1313-18 (Fed. Cir. 1986) (reaffirming International Trade Administration interpretation of countervailing duty statute as reasonable assessment of intent and language of statute); Melamine Chems., Inc. v. United States, 732 F.2d 924, 928 (Fed. Cir. 1984) (upholding Commerce Department interpretation of anti-dumping statute).

16. 753 F.2d 1033 (Fed. Cir. 1985).


18. 785 F.2d 994 (Fed. Cir. 1986).


20. 914 F.2d 233 (Fed. Cir. 1990).

21. See id. at 236-38 (stating that agency authority to make individual case determinations was neither "arbitrary and capricious" nor an "abuse of discretion").

22. Id. at 236 (finding no language in statute that was "plain" in addressing question presented, but finding intention to allow agency discretion in administering law in legislative history).

23. See supra note 13 and accompanying text (discussing Smith-Corona's holding that Sec-
administrative provisions included in section 1401a(b)(4)(A) of the Tariff Act of 1930, the Federal Circuit in Generra Sportswear Co. v. United States found the issue to be whether Customs' interpretation was "sufficiently reasonable." Under this standard, the court deferred to Customs' construction and reversed the Court of International Trade. The court found that the question presented, whether quota charges were dutiable, was not expressly addressed in the statute. In Generra, in order to defer to the agency's construction, the court had to distinguish its own precedent, a 1967 decision of the Court of Customs and Patent Appeals.

On the other hand, traditionally in interpreting the tariff schedules, the court has not deferred to Customs' construction. For example, in Richards Medical Co. v. United States, the court succinctly stated that to decide a question of statutory construction, "we start first with the plain meaning of the statute, and then go to other extrinsic aids such as legislative history if necessary." The court did not discuss whether the absence of "plain language" constituted an implicit delegation to the agency to interpret the statute in the first instance. Nor did the court address whether the Customs Service

retary of Commerce is entitled to broad discretion; supra note 11 and accompanying text (discussing the standards for review under Chevron).

25. 905 F.2d 377 (Fed. Cir. 1990).
27. Id. at 379 (holding that because statutory construction applied by Customs was permissible interpretation, it must be upheld).
28. Id.
29. Id. at 380-81 (holding quota charges not dutiable on ground that "transaction value" under section 1401a could reasonably be interpreted in different manner than "export value" under pre-1979 statute). The court distinguished United States v. Getz Bros. & Co., 55 C.C.P.A. 11, 15 (1967) (appraising merchandise on basis of "export value" only).
30. 910 F.2d 828 (Fed. Cir. 1990).
31. Richards Medical Co. v. United States, 910 F.2d 828, 830 (Fed. Cir. 1990) (citing Johns-Manville Corp. v. United States, 855 F.2d 1556, 1559 (Fed. Cir. 1988)) (analyzing congressional intent and meaning of statutory language without any reference to whether Customs' interpretation was "reasonable"). Indeed, conceding that there were many dictionary definitions of the key statutory term, the court did not ask whether Customs' definition was a reasonable one, but instead queried: "Which definition best invokes the intent of Congress?" Id. at 830. See also Eastalco Aluminum Co. v. United States, 916 F.2d 1568, 1569-71 (Fed. Cir. 1990) (applying rules of statutory construction, finding no express language in the statute, and resorting to legislative history to gauge meaning of "substantially crystalline" as used in tariff schedules).
32. See Richards Medical, 910 F.2d at 830 (interpreting statutory language without addressing whether agency's authority to interpret was permissible); see also Avesta A.B., 914 F.2d at 236-38 (finding absence of specific language implicitly gives ITC right to make reasonable interpretations on a case-by-case basis); Smith-Corona, 713 F.2d at 1571 (holding that absent explicit rules, assessment of statutory language and legislative intent enable agency to make reasonable determinations).
interpretation was a reasonable one, even though the court could interpret the statute differently.\textsuperscript{33}

II. A HARDER LOOK AT TRADE CASES

In 1990, the Federal Circuit did not uniformly defer to the Commerce Department or International Trade Commission. In some cases, the court stated the question presented without reference either to Smith-Corona, to Chevron, or to whether an agency determination was "reasonable."

In Olympic Adhesives, Inc. v. United States\textsuperscript{34} and U.H.F.C. Co. v. United States,\textsuperscript{35} two cases involving imported animal glue, the court was faced with a question of statutory interpretation involving the use of "best information available."\textsuperscript{36} Section 776 of the Tariff Act of 1930 provides that the Commerce Department may use the "best information otherwise available" whenever a party "refuses or is unable to produce information requested."\textsuperscript{37} In both cases, the Federal Circuit found that the foreign glue manufacturers had not refused to supply information. Rather, the court found that the parties were unable to submit information because the agency did not ask the right questions in a timely manner.\textsuperscript{38} As a result, the court refused to allow the Commerce Department the discretion to use the "best information available" in a manner that would protect the domestic industry by maintaining a higher dumping margin.\textsuperscript{39}

In prior cases in which the Federal Circuit deferred to the agency, the lack of explicit statutory directions was crucial. In this case, the statute on its face, did not address what information constituted the "best information" or the extent of agency discretion when information was not submitted or available.\textsuperscript{40} From a policy standpoint, the court in Olympic Adhesives and U.H.F.C. ignored the agency deadlines and the interests of the United States industry protected by the antidumping laws. Given a statutory scheme that contemplates annual reviews and regulations that require reviews to be completed within

\textsuperscript{33} See Richards Medical, 910 F.2d at 830 (upholding C.I.T. interpretation of statute without commenting on reasonableness of determination made by Customs); see also Consumer Prods. Div., 753 F.2d at 1039 (stating "it is a cardinal principle that the Secretary's interpretation of the statute need not be the only reasonable interpretation or the one which the court views as the most reasonable").

\textsuperscript{34} 899 F.2d 1565 (Fed. Cir. 1990).

\textsuperscript{35} 916 F.2d 689 (Fed. Cir. 1990).

\textsuperscript{36} Olympic Adhesives, Inc. v. United States, 899 F.2d 1565, 1567 (Fed. Cir. 1990); U.H.F.C. Co. v. United States, 916 F.2d 689, 691 (Fed. Cir. 1990).

\textsuperscript{37} 19 U.S.C. § 1677e(b) (1982).

\textsuperscript{38} Olympic Adhesives, 899 F.2d at 1571; U.H.F.C., 916 F.2d at 696-702.

\textsuperscript{39} Olympic Adhesives, 899 F.2d at 1571; U.H.F.C., 916 F.2d at 696-702.

\textsuperscript{40} 19 U.S.C. § 1677e(b) (1982).
one year of their initiation, Olympic Adhesives and U.H.F.C. effectively prevented the Commerce Department from resorting to the “best information available” when it realized late in an administrative review that the data submitted did not address fundamental issues. In such circumstances, the court was unwilling to permit the Commerce Department to use “best information available” even if there was no time to solicit additional data from the foreign producer and without regard for the domestic industry also party to the proceeding.

This view of the “best information” rule diverges from the earlier holding of the Federal Circuit in Atlantic Sugar Ltd. v. United States. In that case, the court interpreted the “best information” rule in the context of statutory deadlines and required the agency to resort to the “best information” in order to meet its statutory deadline. To the extent that the need for a timely determination left unanswered questions, the court in Atlantic Sugar suggested that when there is not substantial evidence on the record, the proper approach is to remand the determination for further development of the record. This approach, however, must not prevent the agency from relying upon “best information available” adverse to the foreign manufacturer. Given that the purpose of the law is to protect domestic industry from unfair trade, and given that the agency should

41. In practice, the Commerce Department has failed in many cases to complete its “annual” reviews on time. See Nakajima All Co. v. United States, 692 F. Supp. 52 (Ct. Int’l Trade 1988). However, the goal of the regulations is to improve the agency’s past performance and eliminate the backlog of unfinished cases. 19 C.F.R. § 353.22(c)(7) (1990) (providing that reviews will be completed within 365 days).

42. See Olympic Adhesives, 899 F.2d at 1574 (resting decision solely on statutory language regarding noncompliance with information request, without regard for underlying policy implications); U.H.F.C., 916 F.2d at 701 (defining similarly narrow agency authority by restricting International Trade Administration from using “best information” available when party is unable to provide information in accordance with statute, as excessive extension of its authority).

43. See U.H.F.C., 916 F.2d at 701 (finding International Trade Administration not justified in turning to “best information” rule).

44. 744 F.2d 1556, 1560 (Fed. Cir. 1984) (requiring that ITC make determinations based on “best information available” rule as mandated by statute).

45. Atlantic Sugar Ltd. v. United States, 744 F.2d 1556, 1560 (Fed. Cir. 1984) (noting use of term “shall” means that ITC must rely on “best information” to avoid delay in investigation).

46. Id. at 1561-62 (stating that entire record should be taken into consideration to determine substantiality of evidence).

47. Id. (finding that when evidence on record is inadequate to make injury determination, rather than barring use of “best information,” substantial evidence standard should be invoked to obtain information needed to serve as basis for conclusions).

48. See, e.g., Bomont Indus. v. United States, 718 F. Supp. 958, 962 (Ct. Int’l Trade 1989) (noting that purpose of antidumping law is “remedial” in nature); Badger-Powhatan v. United States, 608 F. Supp. 653, 656 (Ct. Int’l Trade 1985) (finding antidumping law “was designed to protect domestic industry from sales of imported merchandise at less than fair value which
render its determinations on time, where necessary data are not available in the administrative record late in the proceeding, the absence of adequate information justifies resort to "best information." Indeed, in Rhone-Poulenc v. United States, the Federal Circuit upheld the agency's reliance on the "best information" on the ground that "[t]he agency's approach fairly places the burden of production on the importer, which has in its possession the information capable of rebutting the agency's inference [that the company was dumping at the highest prior margin]. Moreover, the court reached this conclusion after noting that the agency's regulations allow the agency to take into account the fact that a party refused to supply information. The Federal Circuit also stated that a "permissible" agency interpretation of the statute must be upheld, "unless Congress has directly spoken to the precise question at issue." The Federal Circuit's willingness in Olympic Adhesives and U.H.F.C. to second-guess the agency as to the "best information available" without express statutory language to the contrary or specific guidance in the legislative history is thus a notable departure from the court's prior approach.

The court's 1990 decision in LMI-La Metalli Industriale, S.P.A. v. United States also departed from the standard of deference to agency interpretations with respect to technical adjustments to the calculation of dumping margins. The question presented in LMI involved the calculation of so-called "imputed credit costs." This either caused or threatened to cause injury"; H.R. Rep. No. 317, 96th Cong., 1st Sess. 59-60 (1979) (stating purpose of statute was to bolster and protect domestic industry).


50. As noted by the Federal Circuit in Atlantic Sugar: "One may as well view the ["best information"] rule, in light of the legislative history cited, as a club over the ITC's head, which Congress has brandished to force that agency to arrive at some determination within the time allotted." 744 F.2d at 1560.

51. 899 F.2d 1185 (Fed. Cir. 1990).

52. Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190-91 (Fed. Cir. 1990) (citing Atlantic Sugar Ltd. v. United States, 744 F.2d at 1556, 1560 (Fed. Cir. 1984)).

53. Id. at 1191.

54. Id. at 1190 n.9 (citing Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 842-45 (1984)) (noting that reasonable interpretations of statutes by agencies must be upheld unless Congress specifically and unambiguously defines and resolves exact problem presented).

55. 912 F.2d 455 (Fed. Cir. 1990).

56. LMI-La Metalli Industriale, S.P.A. v. United States, 912 F.2d 455, 460 (Fed. Cir. 1990) (discussing petitioners' claim that imputation of credit cost was erroneously assessed). Imputed credit cost is a function of the number of days that credit is extended and the appropriate interest rate. See United States Department of Commerce, Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change 47-50 (1985). The adjustment is not identified in the statute, but has been followed for several years. Id.
calculation is one of the adjustments that the Federal Circuit addressed in Smith-Corona and Consumer Products, in which the court deferred to the agencies as "masters of the subject."\(^{57}\) In \textit{LMI}, however, the court did not defer to the agency's application of its own rule or to its analysis of the record. Instead, the court invoked the undefined concept of "reasonable commercial behavior" as the basis for overturning the agency action.\(^{58}\)

The antidumping statute provides that when comparing home market and United States prices, the Commerce Department may make allowances for "differences in circumstances of sale."\(^{59}\) Such allowances are to be made if "established to the satisfaction of the administering authority."\(^{60}\) In prior cases, the court invoked this language to justify deference to agency interpretation and the investment of broad discretionary authority in the agency,\(^{61}\) yet in \textit{LMI}, the court did not defer to the agency. \textit{LMI} involved adjustments to the foreign market value for credit costs. The Commerce Department used the Italian interest rate to calculate the cost of credit to the Italian producer, despite evidence that the Italian producer had obtained dollar-denominated loans during the period at lower interest rates.\(^{62}\) The Court of International Trade had held that the Commerce Department correctly presumed that an Italian company would obtain credit in Italy to finance its sales, including its United States receivables.\(^{63}\) Notably, this construction was consistent with prior case law recognizing that respondents seek to minimize the margin of dumping and therefore have the burden of proving the entitlement to adjustments that reduce that margin.\(^{64}\) The Federal Circuit, however, reversed the Commerce Department's approach on this technical issue, finding that "reasonable

\(^{57}\) See supra notes 15-17 and accompanying text (discussing Federal Circuit's deference to agency expertise in these cases).

\(^{58}\) \textit{LMI-La Metalli Industriale, S.P.A. v. United States}, 912 F.2d 455, 460-61 (Fed. Cir. 1990) (requiring that credit cost be imputed on "basis of usual and reasonable commercial behavior" in order "to conform with commercial reality," and ruling that borrowing money at twice the available rate was not "reasonable commercial behavior").


\(^{60}\) \textit{Id.}; see also 19 C.F.R. § 353.56(a) (presenting regulation pertinent to "circumstance of sale" adjustments).

\(^{61}\) \textit{See Smith-Corona, supra} note 12, at 1573 & n.11 (citing language of statute as giving discretion to agency); \textit{Consumer Products, supra} note 16, at 1037-38 (discussing agency interpretation of statute as determinative).

\(^{62}\) \textit{LMI}, 912 F.2d at 460 (discussing whether imputed credit costs were calculated correctly).

\(^{63}\) \textit{See LMI-La Metalli Industriale, S.P.A. v. United States, 712 F. Supp. 959, 969 (Ct. Int'l Trade 1989)} (finding Commerce Department's use of Italian short term rate in calculating credit cost supported by administrative record and in accord with law).

\(^{64}\) \textit{See Timken Co. v. United States, 673 F. Supp. 495, 513 (Ct. Int'l Trade 1987)} (finding it reasonable to place burden on party seeking adjustment because that party has incentive to withhold information).
commercial behavior” dictated the use of a dollar-denominated interest rate.\textsuperscript{65} Given that the “imputed credit cost” was an adjustment created by the Commerce Department pursuant to section 1677b(a)(4) and that the statute permits such adjustments “to the satisfaction of” that agency, the court’s scrutiny of the agency’s presumption differs from the approach in Smith-Corona and its progeny.

\textit{Asociacion Colombiana de Exportadores de Flores v. United States},\textsuperscript{66} a case filed in 1989 and argued on June 4, 1990, illustrates the Federal Circuit’s lack of deference to an agency regulation that was adopted to implement a 1984 statutory change.\textsuperscript{67} \textit{Asociacion Colombiana} involved a recurrent problem in antidumping duty cases, caused by the fact that after an antidumping duty order is issued, the statute contemplates an annual review of the order upon request.\textsuperscript{68} If a party appealed the original antidumping order and the court action is pending at the time to request the first review, the question arises whether the party must request an administrative review to preserve its ability to obtain the benefits of a successful court challenge.\textsuperscript{69} The Court of International Trade split on this question.\textsuperscript{70} Some judges held that the litigant must request a review or face automatic liquidation of its entries under the Commerce Department regulations.\textsuperscript{71} Other judges held that injunctive relief was available to pre-

\textsuperscript{65} See LMI, 912 F.2d at 460 (concluding that International Trade Administration’s use of lira denominated interest rate was not supported by evidence).

\textsuperscript{66} 916 F.2d 1571 (Fed. Cir. 1990).

\textsuperscript{67} See Asociacion Colombiana de Exportadores de Flores v. United States, 916 F.2d 1571, 1576 (Fed. Cir. 1990) (concluding that government’s reliance on own regulation was “misplaced” as regulation was not intended to cover case at bar).

\textsuperscript{68} See 19 U.S.C. § 1675(a)(1) (1988) (providing for administrative review of outstanding antidumping duty order only if requested). Prior to 1984, annual reviews of such orders were automatic. See Asociacion Colombiana, 916 F.2d at 1576 (discussing legislative history of annual review of antidumping orders).

\textsuperscript{69} Because appeals frequently take several years, and on average take well over one year, this situation arises frequently. See generally Shambon, Accomplishing the Legislative Goals for the Court of International Trade: More Speedl More Speedl (presented during the Sixth Annual Judicial Conference of the Court of International Trade, November 3, 1989) (showing that median length of time from filing action to first decision on merits by CIT was 22 months).

\textsuperscript{70} See Cambridge Lee Indus., Inc. v. United States, 723 F. Supp. 1518, 1520 (Ct. Int’l Trade 1989) (noting split of authority in CIT as to “whether a party must request an annual administrative review in order to obtain an injunction against liquidation”), appeal dismissed, 916 F.2d 1578 (Fed. Cir. 1990).

\textsuperscript{71} See, e.g., Cambridge Lee, 723 F. Supp. at 1519-20 (affirming view that failure to follow administrative review procedures did not establish irreparable injury to plaintiff seeking injunction to prevent automatic liquidation of entries); NTN Bearing Corp. v. United States, 701 F. Supp. 226, 227 (Ct. Int’l Trade 1988) (upholding view that injunctive relief should not be granted since plaintiff did not use administrative relief); Fundicao Tupy S.A. v. United States, 669 F. Supp. 437, 439 (Ct. Int’l Trade 1987) (denying injunctive relief to plaintiffs because they had not chosen to participate in administrative review), appeal dismissed, 841 F.2d 1101 (Fed. Cir. 1988).

“Liquidation of entries” is the process by which imports undergo final agency action. Zenith Radio Corp. v. United States, 710 F.2d 806, 809-10 (Fed. Cir. 1983). Once the “entry”
vent the agency from liquidating the entries and undermining the original appeal. Although the regulation was reasonably contemporaneous with the statutory amendment and had been upheld by a three-judge panel of the Court of International Trade, the Federal Circuit disagreed with the Commerce Department’s position and did not address the regulation in terms of its “reasonableness.”

The statute itself does not address this issue. Although the court did not find the legislative history to be specifically on point, it did rely on the intent of Congress to reduce the burdens on the agency. Under similar circumstances, the court in prior decisions had held that the agency’s interpretation “need not be the only reasonable interpretation,” and had declined to substitute its judgment for that of the agency. In *Asociacion Colombiana*, however, the

is “liquidated,” the amount of antidumping duty assessed cannot be refunded or increased by court order. *Id.* Under the Commerce Department regulation at issue in *Asociacion Colombiana*, imports under an antidumping duty order would have been liquidated by virtue of the plaintiffs’ failure to request an administrative review, even though a court challenge was pending to determine the correctness of the antidumping duty order. Absent a request for review, entries of imported merchandise subject to an antidumping duty order are subject to the assessment of duties “at rates equal to the cash deposit of, or bond for, estimated antidumping duties.” 19 C.F.R. § 353.22(e)(1) (1990). To prevent such final action, the regulations required the litigants to request an administrative review. *Id.*


73. See Fundicao Tupy S.A. v. United States, 669 F. Supp. 437, 439 (Ct. Int'l Trade 1987) (upholding “statutory scheme” and stating that plaintiff was not contesting “the validity of the regulation” nor lack of adequate notice under regulation).

74. See *Asociacion Colombiana*, 916 F.2d at 1576 (finding Commerce Department’s reliance on regulation to be “misplaced”).

75. *Id.* Paradoxically, as a result of the court’s construction, it is likely that the agency’s burdens will be increased. First, customs will now have to recalculate the appropriate duty rates to be assessed on entries where no annual review was requested whenever an appeal of the antidumping duty order retroactively changes the estimated duty rate that was paid on entry. Second, whenever an appeal is pending, domestic interested parties will now lack certainty with regard to the duty deposit rate and will have an irresistible incentive to request annual reviews in order to protect against a lowering of the antidumping duty rates as a result of the court appeal.

76. See Consumer Prod. Div., SCM Corp. v. Silver Reed Am., 753 F.2d 1033, 1039 (Fed. Cir. 1985) (finding it “a cardinal principle that the Secretary’s interpretation of the statute need not be the only reasonable interpretation or the one which the court views as the most reasonable”) (emphasis in original); United States v. Correll, 389 U.S. 299, 307 (1967) (concluding that judicial role in scrutinizing agency rule “begins and ends with assuring that the Commissioner’s regulations fall within his authority to implement the congressional mandate in some reasonable manner”); see also Fulman v. United States, 434 U.S. 528, 534-36 (1978) (accepting “logical force of petitioner’s argument” regarding interpretation of statute, but finding that issue was not how court would resolve ambiguity in statute but whether regulation was reasonable).

77. See Consumer Prod. Div., SCM Corp. v. Silver Reed Am., 753 F.2d 1033, 1038-40 (discussing level of deference to agency’s interpretation of regulation); Smith-Corona Group v. United States, 713 F.2d 1568, 1571 (Fed. Cir. 1983) (stating that “Secretary of Commerce
court did not analyze the regulation’s “reasonableness.” Instead, the court disagreed with the agency’s interpretation of its own regulation and, further, found that the regulation was not intended to address the situation. In fact, the court recast the inquiry in terms of the authority of the courts to issue injunctions. Thus, the Federal Circuit reversed the Court of International Trade’s decisions that had deferred to the agency interpretation but did not explain why deference to the agency interpretation was inappropriate or why a “reasonableness” analysis was inapt.

In *Ipsco, Inc. v. United States*, the Federal Circuit also abandoned a deferential approach to agency action in its review of a significant issue in countervailing duty law. In *Ipsco*, the court considered whether the International Trade Administration could establish an estimated duty deposit rate for subsidized imports from a given country by reference to the weighted-average net subsidy for companies receiving subsidies, i.e., excluding from the average duty deposit rate those companies that did not receive any subsidies. The Federal Circuit began its analysis by stating that it would “give due

---

78. See Asociacion Colombiana de Exportadores de Flores v. United States, 916 F.2d 1571, 1576 (Fed. Cir. 1990) (finding regulation to be directed toward situation where antidumping order is accepted by both parties and amount of duty is not challenged, and not situation at bar where petitioner failed to request annual review and is seeking to enjoin liquidation in suit). The language of the regulation, however, is not so limiting. See supra note 71 (outlining regulation at issue which provides for assessment of duties when “timely request” has not been received). Furthermore, the court does not expressly confront the fact that the agency has interpreted its own regulation differently. Compare Asociacion Colombiana, 916 F.2d at 1576 (noting government’s reliance on regulation but not discussing level of deference to agency interpretation) with Consumer Products, 753 F.2d at 1039 (referring to agency as “masters” of the subject in determining reasonableness of regulation).

79. Asociacion Colombiana, 916 F.2d at 1578 (finding no “abuse of discretion” by agency in granting injunction). Even in its analysis of the equity authority of the courts, however, the Federal Circuit departed from a deferential approach, rejecting the agency’s “narrow” construction without the support of any statutory language or legislative history. Id. at 1577 (finding no reason to give narrow meaning to statute as ascribed by government). Although the agency argued in essence that the CIT lacked jurisdiction over the entries for which no review was requested, the court did not address the jurisdictional issue and held only that the CIT’s injunctive powers were “broad.” Id. (arguing that “statute broadly empowers” CIT to enjoin liquidation of entries covered by administrative determinations).

80. 899 F.2d 1192 (Fed. Cir. 1990).

81. Ipsco, Inc. v. United States, 899 F.2d 1192, 1193-94 (Fed. Cir. 1990). In *Ipsco*, eleven Canadian producers of oil country tubular goods were under investigation by the International Trade Administration (ITA). Of the eleven companies, eight reported receiving no subsidies, one reported de minimis subsidies, one did not respond, and Ipsco itself reported subsidies amounting to less than one percent. Id. at 1193. Based on verification of these responses, ITA issued negative determinations, excluding the eight companies not subsidized and the one company that received de minimis subsidies from the countervailing duty order. Id. at 1193-94. With respect to Ipsco, the company that did not respond, and any future exporters not identified, ITA issued an affirmative determination and set the rate for estimated duties equal to Ipsco net benefit. Id.
weight to the agency's interpretation of the statute." The court went on to find that "[n]either the countervailing duty statute nor the applicable regulations ... specifically state how a 'net subsidy' is calculated." Then, the court reviewed both consistent and inconsistent agency precedents. At this point, a deferential *Chevron* approach would have permitted the court to affirm the agency's interpretation as a reasonable one. The fact that the agency had taken different approaches in various cases and had been affirmed by the Court of International Trade indicated that reasonable people could reach different conclusions regarding the same issue. Therefore, had the court followed a deferential approach, it would not have substituted its judgment for that of the agency.

The Federal Circuit, however, found that congressional intent was to create a presumption that countervailing duty rates should be applied country-wide. The court mentioned Congress' intent to provide relief to injured domestic industries from subsidized merchandise and its condemnation of unfair trade. But, under the court's holding, a single company or a small number of companies subsidized by a foreign government will escape the countervailing duty law to the extent that there are other exporters who do not receive subsidies and whose exports sufficiently dilute the countrywide average net subsidy. The court did not reconcile this result with its citation of congressional intent to discourage injurious sub-

---

82. *Id.* at 1194-95 (citing *Zenith Radio Corp. v. United States*, 437 U.S. 443, 450 (1978)). The court further stated that it could "not sustain the ITA's exercise of administrative discretion if it contravene[d] statutory objectives." *Id.* at 1195.

83. *Id.* at 1195 (outlining provisions of applicable regulations).

84. *Id.* at 1196-97 (finding it apparent "that the ITA has no consistent method for calculating the net subsidy when there are both producers and exporters receiving a non-de minimis subsidy and others that receive no subsidy or only a de minimis subsidy").


86. *Ipsco*, 899 F.2d at 1197 (quoting 19 U.S.C. § 1671(a)(2) (1988) and stating that "countervailing duty orders presumptively apply to all merchandise of such kind or class exported from the country investigated"). Notably, the cited language does not necessarily mean that all imports of subsidized merchandise should pay the *same* countervailing duty. It may simply be interpreted to mean that all subsidized imports from that country should be covered by the countervailing duty order.

87. See *supra* note 48 and accompanying text (noting that intent of statute is remedial). Congressional intent to provide strong enforcement of trade laws has been stated repeatedly. See, e.g., H.R. REP. NO. 317, 96th Cong., 1st Sess. 48-49 (1979) (intending to increase enforcement of antidumping laws through allocation of resources "to ensure vigorous administration"); H.R. REP. NO. 726, 98th Cong., 2d Sess. 2 (1984) (explaining that antidumping laws are important "because they offset and deter predatory dumping"); S. REP. NO. 71, 100th Cong., 1st Sess. 90-91 (1987) (revising antidumping and countervailing duty laws "to improve their effectiveness").
sidization.\textsuperscript{88} The court based its conclusion upon the absence of statutory language, inconsistent agency precedent, and inconsistent legislative history. Yet, it did so without application of \textit{Chevron}.

\section*{III. A Principled Basis for Closer Scrutiny}

Because in 1990 the Federal Circuit did not consistently follow \textit{Chevron}, \textit{Smith-Corona}, and \textit{Consumer Products} in reviewing agency interpretations of the unfair trade laws,\textsuperscript{89} the lower court is without clear guidance regarding the appropriate degree of deference it should employ. Professor Davis has summarized the state of administrative law decisions by the Supreme Court in a manner that is apt here: "The law is not that courts use a reasonableness test in reviewing administrative determinations of questions of law, and the law is not that courts substitute judgment on such determinations; the law is that courts have discretionary power either to use a reasonableness test or to substitute judgment."\textsuperscript{90} The Federal Circuit's 1990 decisions fall into both categories: some cite \textit{Smith-Corona} and \textit{Chevron} and defer to agency interpretations of statutes,\textsuperscript{91} others cite to "plain language" and congressional intent, and interpreting the statute \textit{de novo}.\textsuperscript{92}

In the area of interpretation of the tariff schedules, the lack of deference to agency interpretation and the uniform absence of citation to cases such as \textit{Chevron} reflect the longstanding approach of the Federal Circuit and its predecessors.\textsuperscript{93} \textit{Richards Medical} and \textit{East-
talc Aluminum Co. v. United States are in accord with traditional principles of statutory interpretation and the standard of review that is applied in customs matters. When faced with a question of statutory interpretation, however, the deferential standard applied to factual questions in customs cases is not apparently relevant. Indeed, in customs cases, there is a presumption of correctness that attaches to the agency’s classification. It is not logical, then, to apply a more deferential standard of review where the question is whether an agency construction of the law is “not in accordance with law.” In either case, the same standard should apply to legal questions, which are within the particular expertise of courts as interpreters of statutes.

Since Smith-Corona, the Federal Circuit has generally been deferential to agency interpretations of the antidumping and countervailing duty laws. The increasing willingness of the Federal Circuit to overturn agency interpretations may signal that in the eleven years since the passage of the Trade Agreements Act of 1979100 and the creation of the Federal Circuit, the court is more comfortable with the statutory scheme and the legislative intent, and more willing to examine critically agency interpretations. Nevertheless, the court has not properly distinguished its approach in those cases.

Court of Customs Appeals, United States v. Charles H. Wyman & Co., 156 F. 97 (8th Cir. 1907).

94. 916 F.2d 1568 (Fed. Cir. 1990).

95. Construction of a tariff term is a question of law. See Eastalco Aluminum Co. v. United States, 916 F.2d 1568, 1570 (Fed. Cir. 1990) (holding “[s]tatutory interpretation is a question of law”); Richards Medical, 910 F.2d at 830 (claiming meaning of statutory term “therapeutic” is a question of law); Stewart-Warner Corp. v. United States, 748 F.2d 663, 665-67 (Fed. Cir. 1984) (turning to “well-established rules of customs construction” to define term “bicycle speedometer” where plain meaning was not clear).


97. This is the applicable standard of review in appeals from antidumping and countervailing duty cases. See 19 U.S.C. § 1516a(b)(1) (1988) (stating that action “not in accordance with law” is unlawful). The section provides, in pertinent part: “The Court shall hold unlawful any determination, finding, or conclusion found . . . to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” Id.

98. See supra notes 15-29 and accompanying text (discussing deference to agency interpretations of post-Smith-Corona cases such as Consumer Products, American Lamb, Avesta AB, and Generra Sportswear).

99. See, e.g., Asociacion Colombiana de Exportadores v. United States, 916 F.2d 1571, 1576 (Fed. Cir. 1990) (rejecting agency reliance on regulation by finding that regulation did not cover fact situation at issue); U.H.F.C. Co. v. United States, 916 F.2d 689, 701 (Fed. Cir. 1990) (finding that ITA could not use “best information” where fact that information did not and could not exist was reason party failed to give information); LMI-La Metalli Industriale, S.P.A. v. United States, 912 F.2d 455, 461 (Fed. Cir. 1990) (concluding that “ITA’s assessment of a fira-denominated interest rate for the imputed cost of credit” was not supported by “substantial evidence”).


101. See infra note 103 (providing history of Federal Circuit and its establishment in 1982).
decisions in which it has continued to defer to agency interpretations.\textsuperscript{102}

The foundation for more intrusive review in the interpretation and application of the international trade laws should be derived from the specialized nature of the reviewing courts. Since their inception, the international trade laws have been administered by specialized agencies, including the Customs Service, the ITC, and the Commerce Department. In 1909, Congress entrusted specialized tribunals with oversight of these agencies.\textsuperscript{103} The Court of International Trade and the Federal Circuit currently perform these oversight duties. The national jurisdiction of these courts ensures uniformity in application of the international trade laws.

When Congress amended the jurisdictional provisions covering antidumping, countervailing duty, and customs appeals in 1980,\textsuperscript{104} it was well aware that the courts reviewing these statutes would have expertise in the area.\textsuperscript{105} Congress’ repeated amendments of the

\textsuperscript{102} Compare Avesta AB v. United States, 914 F.2d 233, 236-37 (Fed. Cir. 1990) (agreeing that ITC had discretion to determine whether review investigation should be initiated after finding that statute contained “less than exacting standards of decision” and that legislative history indicated some intent to leave discretion to agency) and Generra Sportswear Co. v. United States, 905 F.2d 377, 378-79 (Fed. Cir. 1990) (concluding that Customs’ construction of statute was permissible where statute did not address question at issue) with Asociacion Colombiana, 916 F.2d at 1576 (rejecting agency reliance on regulation because it thwarted purpose of statute) and LMI-La Metalli Industriale, S.P.A. v. United States, 912 F.2d 455, 460-61 (Fed. Cir. 1990) (rejecting ITA’s method of imputing credit costs because it did not conform with “reasonable commercial behavior”).

\textsuperscript{103} In 1890, Congress created the Board of General Appraisers to resolve customs disputes. Customs Administrative Act, ch. 407, §§ 12-14, 26 Stat. 141, 136-38 (1890). Prior to 1909, appeals arising from the adjudication of customs disputes were heard by the various circuit courts pursuant to section 15 of the Customs Administrative Act of 1890. In 1909, Congress created the United States Court of Customs Appeals to hear appeals from the Board. Payne-Aldrich Tariff Act, ch. 6, § 29, 36 Stat. 11, 105-06 (1909). In 1926, Congress changed the Board into the United States Customs Court, Act of May 28, 1926, ch. 411, 44 Stat. 669, and the Court of Customs Appeals was superseded by the United States Court of Customs and Patent Appeals, established by the Act of Mar. 2, 1929, ch. 488, 45 Stat. 1475, 1475.


\textsuperscript{105} See S. REP. No. 466, 96th Cong., 1st Sess. 3 (1979) (noting that CIT would have same expertise and specialized skills of Customs Court). Congress was also concerned with guaranteeing that the CIT would not be unduly influenced in its deliberations by partisan political considerations. To this end, Congress retained a Customs Court requirement for balanced political party membership on the court. 28 U.S.C. § 251(a) (1988) (providing that “[n]ot more than five of [nine member] judges shall be from the same political party”). Congress retained this provision because it felt that “the international trade statutes are laden heavily with differing policy considerations which ought to be reflected in the composition of the
countervailing duty and antidumping duty laws have emphasized congressional disapproval of the administration of these laws by the Treasury and Commerce Departments. Congress has acted to speed up the process, to limit the number of appeals that can be taken by foreign producers and importers, and to ensure that domestic industries injured by unfair trade practices have fair and timely access to the courts. Given this history, it is apparent that agency actions should be met with intensive judicial scrutiny, rather than a deferential approach. Congress depends upon the expertise of the Federal Circuit and the Court of International Trade to ensure that its intent is achieved.

Moreover, the strict statutory deadlines imposed in unfair trade investigations and the increasingly apparent efforts of the Commerce Department in particular to expedite the review of antidumping and countervailing duty orders create an inherent conflict with the fundamental rights to full and fair participation. Congress in 1984 and again in 1988 amended the unfair trade laws in varied ways in order to expedite and streamline proceedings. As a re-

---


107. See S. REP. No. 249, 96th Cong., 1st Sess. 245 (1979) (explaining that interlocutory review added to antidumping and countervailing duty procedures to enable parties to obtain review "at earliest possible opportunity so as to avoid delay"); see id. at 76 (observing that Senate Finance Committee intended that antidumping duties be collected expeditiously so as to reduce uncertainty "for both the importer and the domestic industry"); see also Badger-Powhatan v. United States, 633 F. Supp. 1364, 1372 (Ct. Int'l Trade 1986) (noting that Congress intended to expedite assessment of antidumping duties by requiring deposit of estimated duties).

108. The House Committee on Ways and Means, reporting on the 1984 amendments to Title VII, indicated that one of the important purposes of the amendments was to "lower legal costs, simplify investigations for all parties, and greatly reduce the burdens on the agencies administering these laws." H.R. REP. No. 725, 98th Cong., 2d Sess. 2, reprinted in 1984 U.S. CODE CONG. & ADMIN. NEWS 5127, 5128. Similarly, the Ways and Means Committee, reporting on a predecessor bill to the Omnibus Trade and Competitiveness Act of 1988, indicated that an important purpose of the Act was "to improve the procedures for providing fair and timely access to information . . . ." H.R. REP. No. 40, 100th Cong., 1st Sess., Part 1 at 140. The House Committee also noted that the Act "should provide for a fairer and more efficient proceeding." Id. at 141.
suit of the authority to use new methodologies, for example, averaging and sampling, there will inevitably be pressure on the Commerce Department to sacrifice some degree of fairness in the interests of more rapid decisionmaking. Or, given the authority to accept unverified data, Commerce may reduce its thoroughness to the detriment of domestic interested parties. Hence, it is imperative that the courts resist this tendency by applying a greater level of scrutiny to agency determinations made in some cases in the interests of speed at the expense of accuracy and fairness.

These considerations justify a different judicial review of agency interpretation and application of the relevant statutes than the general maxims adopted in Smith-Corona and employed in subsequent cases. In customs cases, the Federal Circuit and its predecessors have invoked a de novo review of statutory language in the tariff schedules, searching for “plain meaning” in the statute and legislative history, without deference to the view of the agency. Nevertheless, the Federal Circuit has not explicitly rejected the deferential standard, nor has it articulated any basis for application of a “reasonableness” inquiry in one case and the substitution of judicial reckoning for that of the agency in another. Thus, the Court of International Trade must guess at which standard to apply whenever it must fill in the interstices of the statute.

A principled approach relies upon the recognition that the Federal Circuit and Court of International Trade are “masters of the subject,” at least when it comes to the “quintessential judicial func-


110. As noted, supra note 109, Congress intended to preserve “reasonable fairness in the results,” S. Rep. No. 725, at 46. The statute thus provides that samples and averages must be “representative” of the transactions under investigation. 19 U.S.C. § 1677f-1(b) (1988); see Asociación Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1114, 1121-22 (Ct. Int’l Trade 1989), aff’d, 901 F.2d 1089 (Fed. Cir. 1990) (upholding use of monthly average United States price as “representative”).

111. The 1984 amendments also authorized the Commerce Department to omit verification of submitted information, unless verification was timely requested by a party. Trade and Tariff Act of 1984, § 618, 98 Stat. 3037, codified 19 U.S.C. § 1677e(b). The purpose of the amendment was to remove “an unnecessary additional administrative burden on the Department of Commerce . . . .” S. Rep. No. 725, at 43. Yet, Congress recognized that “proper enforcement” of the law and accurate assessment of duties were best ensured by verification of information submitted by parties. Id.

112. In a recent decision, the court noted that “[t]he meaning of a particular term . . . is a question of law and therefore not entitled to the deference we exercise with respect to fact questions.” Libbey Glass, Inc., v. United States, No. 90-1295, slip. op. at 3 (Fed. Cir. Dec. 18, 1990) (citing Daw Indus., Inc. v. United States, 714 F.2d 1140, 1142 (Fed. Cir. 1983)).
tion” of statutory interpretation.\textsuperscript{113} By explicitly recognizing its special mandate, the Federal Circuit would signal the Court of International Trade in the 1990s to defer less often to agency interpretation. Of course, to have an effect in an area of the law where amendments occur every four years and annual reviews threaten to moot court decisions even before they are made, the Federal Circuit must expedite its decisions.\textsuperscript{114} This increased attention to the purpose of the statute and greater willingness to examine so-called “technical” issues may reduce the need to regularly amend the international trade laws.

This is not to say that a lack of deference to agency interpretations in 1990 necessarily produced the correct result in the specific cases this Article addressed. As reviewed above, specific decisions were at odds with the language and purpose of the statute or with prior caselaw. In \textit{LMI},\textsuperscript{115} for example, the court’s failure to recognize that respondents in dumping cases have an incentive to withhold information and to understate the margin of dumping\textsuperscript{116} detracts from the basis of that decision to measure credit costs by dollar-denominated loans without proof that such loans were obtained.\textsuperscript{117} Similarly, in \textit{U.H.F.C. Co. v. United States},\textsuperscript{118} the same oversight undermines its decision not to permit the Commerce Department to rely solely on the “best information” available where a party has failed to give the Department information.\textsuperscript{119} Nevertheless, the court’s willingness to overturn the agency, even in a highly technical area, is a positive development.

\textbf{Conclusion}

The Federal Circuit should reclaim this ground as “master” of the subject in interpreting these unfair trade laws. Congress’ reliance

\textsuperscript{113} Bureau of Alcohol, Tobacco & Firearms v. Federal Labor Relations Auth., 464 U.S. 89, 98 n.8 (1983) (holding that interpreting statutes is the “quintessential judicial function”).

\textsuperscript{114} During January-November 1990, 27 of the 36 opinions issued concluded cases docketed in 1989. \textit{See} Shambon, supra note 69, at 10-15 (discussing length of time from docketing to decision). Moreover, at least one case still on the court’s docket in 1991 was docketed in 1988. PPG Industries, Inc. v. United States, App. No. 88-1175 (appeal docketed January 15, 1988). Briefing is complete and oral argument was held in this case in June 1988. Subsequent to the argument, one of the panelists died. To date the case has not been reargued and it remains on the court’s docket undecided.

\textsuperscript{115} \textit{See} supra notes 55-63 and accompanying text (discussing \textit{LMI}).

\textsuperscript{116} The Federal Circuit relied on precisely this factor in \textit{AL Tech Specialty Steel Corp. v. United States}, 745 F.2d 632, 641 (Fed. Cir. 1984) (recognizing “incentive for foreign respondents to present inaccurate or unreliable data” while holding that Commerce Department must verify foreign manufacturers’ information during periodic review of outstanding antidumping duty order).

\textsuperscript{117} \textit{LMI}, 912 F.2d at 460-61.

\textsuperscript{118} \textit{U.H.F.C. Co. v. United States}, 916 F.2d 689 (Fed. Cir. 1990).

\textsuperscript{119} \textit{Id.} at 700-01.
on specialized courts to oversee the two agencies charged with administering a complex law under tight deadlines suggests that the courts should take a hard look at agency decisions based upon the superior principles of congressional intent, manifested in the language of the statute and the legislative history. Where its 1990 decisions departed from that intent, the Circuit’s opinions were flawed. To the extent, however, that the court rigorously examined the agencies’ application of the law, its decisions are a step in the right direction. What remains for future opinions is a consistent approach that ensures a judicial review of international trade cases that is both uniformly rigorous and in accordance with congressional intent.
## Disposition of 1990 International Trade Cases

<table>
<thead>
<tr>
<th>Decided</th>
<th>CIT</th>
<th>CAFC Aff’d</th>
<th>CIT Aff’d</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/18/90</td>
<td>yes</td>
<td>yes</td>
<td></td>
</tr>
<tr>
<td>11/30/90</td>
<td>yes</td>
<td>yes</td>
<td></td>
</tr>
<tr>
<td>11/29/90</td>
<td>no</td>
<td>no</td>
<td></td>
</tr>
<tr>
<td>11/28/90</td>
<td>yes</td>
<td>no</td>
<td></td>
</tr>
<tr>
<td>10/18/90</td>
<td>yes</td>
<td>no</td>
<td></td>
</tr>
<tr>
<td>10/18/90</td>
<td>yes</td>
<td>no</td>
<td></td>
</tr>
<tr>
<td>10/18/90</td>
<td>yes</td>
<td>no</td>
<td></td>
</tr>
<tr>
<td>10/18/90</td>
<td>aff’d in part &amp; rev’d in part yes/no part aff’d part rev’d yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>09/26/90</td>
<td>no</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>09/14/90</td>
<td>yes</td>
<td>yes</td>
<td></td>
</tr>
<tr>
<td>09/06/90</td>
<td>yes</td>
<td>no</td>
<td></td>
</tr>
<tr>
<td>08/17/90</td>
<td>yes/no</td>
<td>aff’d part, rev’d part yes</td>
<td>yes</td>
</tr>
<tr>
<td>08/03/90</td>
<td>yes</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>08/02/90</td>
<td>yes</td>
<td>no</td>
<td></td>
</tr>
</tbody>
</table>

- Libbey Glass v. United States.
- Marsuda-Rodgers, Int’l v. United States.*
- Asociacion Colombiana de Exportadores de Flores v. United States, 916 F.2d 1571 (Fed. Cir. 1990).
- Eastalco Aluminum Co. v. United States, 916 F.2d 1568 (Fed. Cir. 1990).
- Cambridge Lee Indus., Inc. v. United States, 916 F.2d 1578 (Fed. Cir. 1990).
- Smith Corona Corp. v. United States, 915 F.2d 683 (Fed. Cir. 1990).
- Avesta AB v. United States, 914 F.2d 233 (Fed. Cir. 1990).
- Richards Medical Co. v. United States, 910 F.2d 828 (Fed. Cir. 1990).
○ Tropicana Prod., Inc. v. United States, 909 F.2d 504 (Fed. Cir. 1990).
07/20/90 yes yes

○ Georg Mueller of Am. v. United States, 909 F.2d 1495 (Fed. Cir. 1990).*
07/12/90 yes yes

○ Figure Flattery, Inc. v. United States, 907 F.2d 141 (Fed. Cir. 1990).
07/11/90 yes yes

06/29/90 vacated & remanded n/a

○ Philip Morris, U.S.A. v. United States, 907 F.2d 158 (Fed. Cir. 1990).*
06/13/90 yes/no yes

05/30/90 yes yes

05/22/90 no no

○ Sandvik AB v. United States, 904 F.2d 46 (Fed. Cir. 1990).*
05/17/90 yes yes

○ Asociacion Colombiana de Exportadores de Flores v. United States, 903 F.2d 1555 (Fed. Cir. 1990).
05/16/90 yes yes

○ Makita U.S.A. v. United States, 904 F.2d 44 (Fed. Cir. 1990).*
05/01/90 yes **

04/27/90 no **

○ Chaparral Steel v. United States, 901 F.2d 1097 (Fed. Cir. 1990).
04/17/90 no no

○ Asociacion Colombiana de Exportadores de Flores v. United States, 901 F.2d 1089 (Fed. Cir. 1990).
04/11/90 yes yes

04/04/90 yes **

○ Ipsco v. United States, 899 F.2d 1192 (Fed. Cir. 1990).
04/03/90 no/yes yes/no

○ Olympic Adhesives, Inc. v. United States, 899 F.2d 1565 (Fed. Cir. 1990).
03/28/90 no yes

○ Rhone Poulenc, Inc. v. United States, 899 F.2d 1185 (Fed. Cir. 1990).
03/27/90 yes yes
<table>
<thead>
<tr>
<th>Date</th>
<th>Case Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>03/13/90</td>
<td>Allied Tube &amp; Conduit Corp. v. United States, 898 F.2d 780 (Fed. Cir. 1990).</td>
</tr>
<tr>
<td>02/28/90</td>
<td>Interocean Chem. &amp; Mineral Corp. v. United States.</td>
</tr>
<tr>
<td>01/19/90</td>
<td>Timken Co. v. United States, 894 F.2d 385 (Fed. Cir. 1990).</td>
</tr>
<tr>
<td>01/04/90</td>
<td>Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990).</td>
</tr>
</tbody>
</table>

* - unpublished decision of the court
** - appealed directly from the determination of the ITC under 19 U.S.C. 1337