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ALERT

# Supreme Court Overturns *Chevron* Deference in *Loper Bright* Decision

June 28, 2024

In a landmark decision on June 28, 2024, the U.S. Supreme Court issued a 6-3 opinion in *Loper Bright Enterprises et al. v. Raimondo* (*Loper Bright*), overturning the four-decades-old deference doctrine established in *Chevron USA Inc. v. NRDC*. The majority opinion was written by Chief Justice Roberts, with a concurrence by Justice Gorsuch and a dissent from Justice Kagan, joined by Justice Sotomayor and Justice Jackson.

While the much-anticipated decision has wide implications for deference to agency determinations, the impact on most trade remedy determinations should be relatively modest, at least in the near term. Importantly, the opinion specifies that previous cases decided under the *Chevron* doctrine remain subject to statutory *stare decisis* and are not invalidated by today's decision.[1]

The case arose from challenges involving certain fishery management plans pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), which requires Atlantic herring fishermen to carry third-party observers aboard their vessels through regulatory plans developed by one of eight fishery councils that are then promulgated as regulations by the National Marine Fisheries Service (NMFS). The NMFS fully funded the observer coverage for New England until 2020, when it promulgated a rule approving an amendment requiring fishermen to pay for observers if federal funding becomes unavailable. The fishermen now bear the cost of the observer themselves, reducing annual returns by up to 20 percent. The MSA did not provide that such costs would be borne by the New England industry, but lower courts deferred to the U.S. Department of Commerce's (DOC) interpretation of the MSA, relying on the *Chevron* doctrine. The Supreme Court granted certiorari in

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## Practice Areas

Antidumping and Countervailing Duties/ Trade Remedy Cases

International Trade

*Loper Bright* on the narrow question of whether the *Chevron* deference doctrine should be overruled or clarified.

*Chevron* established a two-step analysis with regard to judicial review of statutory interpretation: At step one, if a statute was determined to be unambiguous, an agency was required to adhere to the statute's plain language. At step two, if the statutory language was determined to be ambiguous, a court would defer to an agency's reasonable interpretation. Under *Loper Bright*, courts now must interpret statutory questions without resorting to *Chevron* deference. Other deference doctrines, however, including *Skidmore* deference and consideration of an agency's expertise, are unaffected.[2]

Given the unique nature of litigation under the trade laws, *Loper Bright* is unlikely to significantly impact appellate litigation in the trade remedy space, at least in the near term. A substantial portion of trade appeals involve challenges to the sufficiency of agency factual determinations, and thus do not involve statutory interpretation at all. Further, in appeals from scope determinations, DOC has long been entitled to substantial deference with regard to interpretations of its own antidumping duty orders, without reference to *Chevron*.[3]

The U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit reach *Chevron* deference under the second step of the analysis only in rare situations, such as in *BMW of North America v. U.S.*, an appeal of an administrative review resumption that followed the re-instatement of an antidumping duty order by appellate proceedings.[4] Even when there is a question of interpretation of statute or regulation and the deference step is reached, the Federal Circuit bases its determination of whether the agencies' interpretations were reasonable on the agency record[5] and heavily considers the expertise of the agencies. In this regard, the Federal Circuit has recognized the DOC's special expertise as the "master of antidumping law" and accorded substantial deference to trade remedy determinations,[6] a doctrine originating before *Chevron* deference that will continue to apply to deference analyses going forward.

Wiley's International Trade practice can assist with any questions relating to international trade compliance and litigation. For more information about these issues, please contact one of the attorneys listed on this alert.

[1] *Loper Bright* at 34.

[2] *Loper Bright* at 25 (citing *Bureau of Alcohol, Tobacco and Firearms v. FLRA*, 464 U.S. 89, 98, n. 8 (1983)), *Skidmore v. Swift & Co.*, 323 U.S. 134, 140.

[3] *See e.g. King Supply Co., LLC v. U.S.*, 674 F.3d 1343, 1348 (Fed. Cir. 2012) (referencing Tak Fat Trading Co. v. United States, 396 F.3d 1378, 1382 (Fed. Cir. 2005)).

[4] *BMW of North America LLC, v. United States*, 926 F.3d 1291, 1299-1302 (Fed. Cir. 2019).

[5] *See Sanxi Hairui Trade Co., Ltd. v. United States*, 39 F.4th 1357, 1360-64 (Fed. Cir. 2022) (reaching "reasonable interpretation" analysis under *Chevron* step 2 and deferring to DOC, finding that the agency reasonably relied on AFA-based margins because of record evidence and findings in previous administrative

reviews).

[6] *Smith-Corona Group v. United States*, 713 F.2d 1568, 1571 (Fed. Cir. 1983); F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000) ("this court has repeatedly held that DOC's special expertise makes it the "master" of the anti-dumping law, entitling its decisions to great deference from the courts.").

*April Song, a Wiley 2024 Summer Associate, contributed to this alert.*