

Comments of ICLE, In the Matter of Certain Carbon and Steel Alloy Products, International Trade Commission

February 1, 2017

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Summary

“A cornerstone of the Initial Determination is that “[u]nder *TianRui*, the Commission’s discretion cannot be exercised in a way that conflicts with applicable federal law,”¹ and, therefore, that “the dispute between U.S. Steel and Respondents in this case must be resolved using the same substantive law that governs federal antitrust cases.” But this conclusion misreads *TianRui*’s holding, and is misapplied here.

Moreover, because adjudicative process at the ITC, available remedies, and the statutory objectives of Section 337 are substantially different than Article III processes, remedies, and the aims of the antitrust laws when adjudicated in Article III courts, the unmodified importation of standing rules from Article III courts to the ITC is improper.

Finally, the end to which trade laws are directed is not necessarily, or not solely, consumer welfare in an antitrust sense, and a protection of domestic injury — effectively the opposite of what’s required for antitrust standing under the antitrust laws in Article III courts — may be perfectly actionable under Section 337. As Section 337 is a standalone statute, the importation of antitrust rules can be effected only to the extent that such importation furthers the objectives of Section 337 — and certainly not in a way that would contravene them...”

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