

Pennsylvania Supreme Court Interprets Steel Products Procurement Act To Preclude Deductions Of “Domestic Overhead” Costs For Foreign “Articles, Materials, And Supplies”

In a case of first impression, Pennsylvania’s Supreme Court examined the definition of “steel products” in the Pennsylvania Steel Products Procurement Act (the “Pennsylvania Steel Act”), which was enacted in 1979. The case involved an assessment of “whether a particular product that contains both foreign and domestic steel satisfies the” requirement that “at least 75 percent of the cost of the articles, materials, and supplies have been mined, produced, or manufactured, as the case may be, in the United States.”

At issue were certain blowers that are used in waste treatment facilities. The vendor certified that the products complied with this standard. In performing the cost calculation, the vendor deducted 10 percent of the invoice costs and asserted that this amount “encompassed importation, warehousing, and shipping costs” while the remaining 90 percent “represented the value of the foreign component being sold.” Importantly, the vendor’s product would not have met the minimum 75 percent U.S.-origin cost requirement without removing the importation, warehousing, and shipping costs.

The Pennsylvania Supreme Court’s [majority opinion](#) rejected the vendor’s approach and held that the statute’s cost definition “must encompass *all* aspects of the price paid to acquire the” articles, materials, and supplies “that make up a steel product.” The court explained that “[t]his would include not only the expense of the raw material, but also associated expenses, including labor, warehousing, marketing, transportation, and intermediary mark-ups—some combination of which savvy consumers—and more importantly for our purposes, legislators—understand are folded into the final cost to procure any finished product.” In this particular case, the court rejected the vendor’s claim that the overhead costs were incurred domestically by noting “that does not change the fact that the foreign” articles “were mined, produced, or manufactured abroad” and that the costs “are part and parcel of the cost of bringing the foreign” articles “to market” in the United States. The court’s majority also clarified that the cost calculation is based upon the cost of the “articles, materials, and supplies” (“AMSs”) that make up the finished steel product. Thus, the correct denominator for the cost calculation is the amount paid by the vendor “to acquire all of the AMSs required for the build.” The court explained that this approach reduces the risk that the purchase price will conceal the foreign steel content in a steel product and “cut[s] off one avenue by which to subvert the remedial intent” of the Pennsylvania Steel Act to promote greater use of domestic steel.

This case is critically important for any companies that do business with public agencies in the Commonwealth of Pennsylvania. More generally, this case reinforces the need for contractors (in any setting) to understand exactly which rules may apply to a particular project before issuing certifications of compliance to the purchaser or to other contractors that are involved with the project.

Concurring and dissenting opinions may be reviewed [here](#) and [here](#).