What Does the End of Chevron Deference Mean for the Iron and Steel Industries?

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The law firm of Tucker Arensberg contributes this quarterly column focused on the legal issues that may impact our readers. Tucker Arensberg is a full-service law firm headquartered in Pittsburgh, Pa., USA. Servicing the legal needs of the iron and steel industry, Tucker Arensberg has also provided legal counsel to the Association for Iron & Steel Technology.

On 28 June 2024, the U.S. Supreme Court issued a landmark decision in the case of *Loper Bright Enterprises v. Raimondo,* overturning its decision in *Chevron USA v. National Resources Defense Council,* and with it, 40 years' worth of precedent.

Background

Courts have long agreed that government agencies should be permitted deference to interpret the statutes they are charged to enforce. The Courts recognized that government agencies employed experts in their respective fields and that their interpretation of ambiguous statutes was aided by that expertise and therefore deserved, at least, respectful consideration. The Courts appreciated the expertise of government employees working in their respective agencies and were reticent to substitute their view for that of an agency's.

Building on those core concepts, *Chevron* cemented a significant level of deference to agencies. It created a two-step test.

1. Is the statutory language clear and unambiguous? If yes, the statutory language controls.
2. If a statute is ambiguous, the agency's interpretation will be upheld by the reviewing court, even if that court itself might have chosen a different interpretation, so long as the agency's interpretation was not unreasonable.

While *Chevron* has been refined over time, the general test stood for 40 years, during which time it was one of the most important principles in administrative law. By giving executive agencies more freedom to implement laws, it expanded the power of the federal government. It affected nearly every corner of American life, from the financial markets to the environment, and the iron and steel industries were no exception.

There are a number of ways in which the iron and steel industries were directly affected by *Chevron* deference. First, like any industry, the iron and steel industries must be cognizant of changes in employment law. Employment law has been regulated primarily by executive agencies like the Department of Labor (DOL), Equal Employment Opportunity Commission (EEOC), and National Labor Relations Board. In just the past year or so, the Federal Trade Commission's (FTC) non-compete ban,[1] the Department of Labor's overtime rule, and the EEOC's final rule involving accommodations under the Pregnant Workers Fairness Act were all developed under the umbrella of *Chevron* deference and

[1] A Federal Court in Texas issued an order shortly before the printing deadline for this article holding that the FTC's ban on noncompete agreements are unenforceable and that the FTC exceeded its rulemaking authority. The FTC may appeal.

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those agencies' understanding that their interpretations of the law, absent some clear unreasonableness, would prevail against scrutiny by the Courts.

Now, agencies, according to the Court, "have no special competence at resolving statutory ambiguities. Courts do." Courts can no longer "mechanically afford binding deference to agency interpretations" and must instead use their own prudence and "every tool at their disposal" to read statutes, resolve ambiguity, and determine whether an agency's interpretation should be upheld. That means the enforceability of these regulations is up in the air.

The iron and steel industries also feel the impact of regulations pertaining to the environment. The Environmental Protection Agency (EPA) is tasked with interpreting and enforcing regulations related to the environment. Under *Chevron*, this meant EPA regulators had wide leeway to interpret statutory language the way they saw fit, and Courts rarely stepped in to overrule them. This can be seen in dozens of significant cases. For example, in *United States v. Pozsgai,* the Third Circuit permitted the Army Corps of Engineers to essentially craft its own definition for the term "navigable waters." The Army Corps of Engineers unilaterally decided that navigable waters encompassed wetlands, greatly expanding the EPA's powers in regard to the discharge of pollutants. In another case, *Pine Creek Valley Watershed Assoc. v. United States EPA,* a Court applying *Chevron* deference determined that the term "water quality standard" was ambiguous and essentially ceded any power it might have to define the term to the government agency.

Now, the landmark Supreme Court case that entrusted administrative agencies with broad powers of interpretation is no more. The Courts are no longer required to defer to administrative agency decisions and can rely on their own knowledge to either affirm or reject agency positions. This means the employment and environmental regulatory environment that the iron and steel industries have been operating within for over 40 years has more or less been erased.

Where Does This Leave the American Iron and Steel Industry?

Importantly, the Supreme Court noted that prior decisions relying on the *Chevron* framework are not automatically overturned, but the end of *Chevron* does mean agencies will have a more difficult time defending challenges to their regulations. The end of *Chevron* will also probably mean inconsistent results, with some district courts reaching different decisions than their sister courts.

In a few words, the end of *Chevron* means more uncertainty over the fate of older regulations and new proposals. The stalemate in Congress means rules relating to employment law and the environment will continue to come from administrative agencies, but the fate of those rules and regulations will be in doubt as each and every one will face a higher degree of scrutiny in the Courts. And, given the potentially higher probability of prevailing in Court, individuals and organizations who disagree with a regulation may be more inclined to undertake the expense and effort needed to challenge the agency's action.

In light of that, those in the iron and steel industries would be wise to dedicate resources to keep an even closer eye on the federal courts and challenges to agency actions that might affect their business. ✦

Did You Know?

Danieli: Turkish Spooling Line Sets New Speed Record

A Danieli-built bar spooling line is breaking speed records, achieving rates of 40 m/second for 8 and 10 mm diameters, the equipment supplier reports.

According to Danieli, the line, installed at Diler Demir Çelik's Izmit plant in Turkey, is capable of annually producing 500,000 metric tons of twist-free spooled bars in coils, ranging in diameters from 8 mm to 25 mm.

The line includes a 6-pass fast-finishing block, a water-cooling line and Sund Birsta strapping machines. The whole process is controlled by a Danieli Automation system, Danieli said.