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Loper Bright Enterprises v. Raimondo

U.S. Supreme Court Overrules *Chevron,* But Impact On Trade Remedies Litigation Will Be Limited

On June 28, 2024, the U.S. Supreme Court issued its decision in *Loper Bright Enterprises v. Raimondo*. The majority opinion is authored by Chief Justice Roberts and joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett. Justices Thomas and Gorsuch also filed separate concurring opinions. The dissent is authored by Justice Kagan and joined by Justices Sotomayor and Jackson.

The Court's decision overrules the doctrine adopted in 1984 in *Chevron USA Inc. v. NRDC*, which held that courts should defer to an executive agency's reasonable interpretation of ambiguous statutory language. Finding that *Chevron* has "proved to be fundamentally misguided" and "unworkable," Op. 29-30, *Loper Bright* instead reverts to the principle that questions of statutory interpretation should be decided by courts using "traditional tools of statutory construction," without giving deference to the interpretive choices of executive agencies. Op. 26, 35.

The majority decision grounds its analysis in the Constitution's separation of powers and the judiciary's obligation to exercise independent "judgment" in the impartial administration of the nation's laws. The Court's decision emphasizes the text of the Administrative Procedure Act provides that reviewing courts "shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." 5 U.S.C. § 706. As the Court explains, the Administrative Procedure Act codifies the "unremarkable, yet elemental proposition dating back to *Marbury [v. Madison]*: that courts decide legal questions by applying their own judgment." Op. 14.

The Court's conclusion summarizes the case's essential holding:

Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the [Administrative Procedure Act] may not defer to an agency interpretation of the law simply because a statute is ambiguous.

Op. 35.

Justice Kagan's dissent, joined by Justices Sotomayor and Jackson, disagrees with most of the majority's analysis and rejects the view that courts should take the primary role when interpreting statutes governing agency action. The dissent expresses concern that judges will interfere with the work of executive agencies in circumstances where Congress intends them to fill in any gaps in statutes. According to the dissent, understanding what Congress would want is not merely a question of interpreting statutory language, but also often an exercise of "scientific or technical subject matter" expertise. Op. 2. In the dissent's view, because agencies are accountable to the President, they are responsive to the views of democratically elected majorities. Op. 3.

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Some commentators have reacted to *Loper Bright* by expressing concern that the decision could result in eliminating or weakening many of the regulations issued by the U.S. Department of Commerce ("Commerce" or "DOC") and U.S. International Trade Commission ("Commission" or "ITC"). Those concerns may be misplaced.

First, the *Loper Bright* decision states that it does not "call into question prior cases that relied on the Chevron framework." The majority thus makes clear that, although courts are not to apply *Chevron* going forward, past decisions where the courts, including the U.S. Court of International Trade ("CIT") and U.S Court of Appeals for the Federal Circuit ("Federal Circuit"), have deferred to agency interpretations will retain their precedential status. The majority decision emphasizes that "mere reliance on Chevron cannot constitute a 'special justification' for overruling such a holding."

Second, *Loper Bright* does not purport to change the principle—set forth in *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29 (1983)—that an agency's factual determinations and applications of law to fact are entitled to respect. *State Farm* emphasizes that arbitrary-and-capricious review is "narrow" and "a court is not to substitute its judgment for that of the agency." *Id.* at 43. Similarly, nothing in *Loper Bright* upset the "substantial record evidence" standard of review applicable to DOC and ITC decisions. Although questions of statutory interpretation that take place within specific investigations, administrative reviews, or other agency proceedings will no longer enjoy *Chevron* deference, most cases before the CIT and Federal Circuit involve an agreed-upon statutory standard and the application of facts to law. In those cases, the CIT and Federal Circuit will continue to apply *State Farm* and can be expected to uphold the agency's determination unless it was arbitrary and capricious or unsupported by substantial evidence in the record.

Third, *Loper Bright* explains that the reviewing courts' obligation to exercise independent judgment when interpreting a statute does not mean that the agency's views are irrelevant. Courts may "seek aid from the interpretations of those responsible for implementing particular statutes," because those interpretations often reflect "a body of experience and informed judgment to which courts and litigants may properly resort for guidance." Op. 16. Moreover, *Loper Bright* emphasizes that more weight should be given to agency interpretations "issued contemporaneously with the statute at issue," which "have remained consistent over time," and which therefore reflect the agency's "longstanding practice."

Op. 8, 16-17. A significant body of DOC and ITC regulations and practices were developed contemporaneously with the enactment of the most relevant statutes covering trade remedies (*e.g.,* The Uruguay Round Agreements Act). Those regulations and practices were promulgated immediately following the statutory changes and were promulgated or developed pursuant to Congress's express delegation of rulemaking authority (*e.g.*, 19 U.S.C. § 1335 for the ITC, and 19 U.S.C. § 3511, Section 103, for the DOC). In addition, administrative practice has remained consistent over time and are unlikely to change significantly simply because a new administration has come into office. These distinct attributes increase the likelihood that the two agencies' decisions will be given greater weight by their reviewing courts.

***Fourth**,* other doctrines of agency interpretation remain untouched. Most notably, the Supreme Court expressly endorsed the continuing validity of *Skidmore v. Swift*, "explained that the 'interpretations and opinions' of the relevant agency, 'made in pursuance of official duty' and 'based upon . . . specialized experience,' 'constitute[d] a body of experience and informed judgment to which courts and litigants [could] properly resort for guidance,' even on legal questions. 'The weight of such a judgment in a particular case … would "depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." Op. at 10.

Fifth, *Loper Bright* may usher in a series of cases that rely on the inherent persuasive value of the agency decision – rather than agency deference – but reach the same result. As *Loper Bright* notes the Supreme Court has not relied on *Chevron* for almost a decade, and experienced advocates turn to a broad range of canons and interpretive principles that apply before a court assesses the reasonableness of an agency's interpretive position. Similarly, the government's briefs in litigation before the CIT and Federal Circuit have been noticeably silent on *Chevron* since the Supreme Court granted *certiorari* review in *Loper Bright.* It is therefore unclear how much *Chevron* has been driving the outcome of cases. In most areas, it is unlikely that large numbers of regulations or adjudicative decisions have remained unchallenged because regulated parties were dissuaded from attempting to overcome the deference that *Chevron* provided.

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Loper Bright confirms the Supreme Court's commitment to a robust role for the federal judiciary in overseeing the operations of the Federal government, but its impact on trade remedy litigation remains to be seen. Companies involved in trade cases should consult with experienced counsel to consider how best to deploy *Loper Bright* when challenging or defending agency decisions in trade remedies litigation.

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