

The Burger Court Opinion Writing Database

Zenith Radio Corp. v. United States

437 U.S. 443 (1978)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

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CHAMBERS OF
THE CHIEF JUSTICE

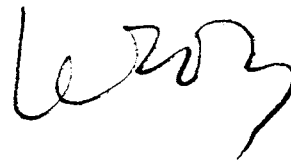
June 10, 1978

Re: 77-539 - Zenith Radio Corp. v. United States

Dear Thurgood:

I join.

Regards,



Mr. Justice Marshall

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 31, 1978

RE: No. 77-539 Zenith Radio Corporation v. United States

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1978

Re: No. 77-539, Zenith Radio Corp. v. U.S.

Dear Thurgood,

I am glad to join your opinion for
the Court.

Sincerely yours,

Mr. Justice Marshall

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 2, 1978

Re: No. 77-539 — Zenith Radio Corp. v. United States

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

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81 MAY 1978

No. 77-539, Zenith Radio Corp. v. United States

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under § 303(a) of the Tariff Act of 1930, 46 Stat. 687, as amended, 19 U.S.C. § 1303(a) (Supp. V, 1975), whenever a foreign country pays a "bounty or grant" upon the exportation of a product from that country, the Secretary of the Treasury is required to levy a countervailing duty, "equal to the net amount of such bounty or grant," upon importation of the product into the United States.¹ The issue in this case is whether Japan confers a "bounty" or "grant" on certain consumer electronic products by failing to impose a commodity tax on those products when they are exported, while imposing the tax on the products when they are sold in Japan.

1/ Section 303(a) provides in relevant part:

(1) Whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant, however the same be paid or bestowed.

* * *

(5) The Secretary shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated.

(6) The Secretary shall make all regulations he deems necessary for the identification of articles and merchandise subject to duties under this section and for the assessment and collection of such duties. All determinations by the Secretary under this section, and all determinations by the Commission under subsection (b)(1) of this section (whether affirmative or negative) shall be published in the Federal Register.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1978

Re: No. 77-539, Zenith Radio Corporation v. United States

MEMORANDUM TO THE CONFERENCE

Unless there is objection, I will add the following sentence to footnote 9 of the opinion for the Court in this case:

Moreover, although the Department did not so state in the notice of final determination, see n. 6, supra, petitioner does not dispute that the Department's decision in this case was based on its longstanding position that the nonexcess remission of an indirect tax is not a bounty or grant.

This should make clear that that we are not expressing approval of the Treasury Department's failure to state more fully the basis for its decision in this case.

Sincerely,

T.M.
T.M.

p. 5

[also correct types. on p. 11,
but do not move
on front]

7 JUN 1978

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-539

Zenith Radio Corporation,	}	On Writ of Certiorari to the United States Court of Customs and Patent Appeals.
Petitioner,		
v.		
United States.		

[June —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under § 303 (a) of the Tariff Act of 1930, 46 Stat. 687, as amended, 19 U. S. C. § 1303 (a) (Supp. V, 1975), whenever a foreign country pays a "bounty or grant" upon the exportation of a product from that country, the Secretary of the Treasury is required to levy a countervailing duty, "equal to the net amount of such bounty or grant," upon importation of the product into the United States.¹ The issue in this case is

¹ Section 303 (a) provides in relevant part:

"(1) Whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation, shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, then upon the importation of such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant, however the same be paid or bestowed.

"(5) The Secretary shall from time to time ascertain and determine,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 7, 1978

Re: No. 77-539 - Zenith Radio Corp. v. United States

Dear Thurgood:

Please join me. I, like Lewis, continue to have some difficulty with Downs. I also was somewhat disturbed by the long administrative delay here and by the Japanese communication distributed shortly before the oral argument.

Your addition to footnote 9 is most helpful.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

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CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 1, 1978

No. 77-539 Zenith Radio v. U.S.

Dear Thurgood:

Although I continue to have difficulty with
Downs, you have written a persuasive opinion.

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

✓
Supreme Court of the United States
Washington, D. C. 20543


CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

(8)
June 13, 1978

Re: No. 77-539 Zenith Radio Corp. v. United States

Dear Thurgood:

Please join me.

Sincerely,


Mr. Justice Marshall

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Supreme Court of the United States
Washington, D. C. 20543

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CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 31, 1978

Re: 77-539 - Zenith Radio Corp. v. United States

Dear Thurgood:

Please join me.

Respectfully,

JL

Mr. Justice Marshall

Copies to the Conference