

# The Burger Court Opinion Writing Database

## *Sumitomo Shoji American, Inc. v. Avagliano*

457 U.S. 176 (1982)

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

CHAMBERS OF  
THE CHIEF JUSTICE

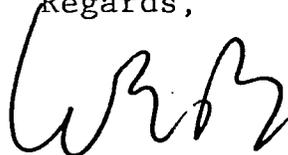
May 28, 1982

Re: No. 80-2070 - Sumitoma Shoji America, Inc. v.  
Avagliano  
81-24 - Avagliano v. Sumitoma Shoji America, Inc.

MEMORANDUM TO THE CONFERENCE:

To get "under the wire" I enclose a proposed opinion in this case in typescript. The machinery is heavily taxed today.

Regards,



To: Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: The Chief Justice

Circulated: MAY 28 1982

Recirculated: \_\_\_\_\_

FIRST DRAFT

Sumitomo Shoji America, Inc. v. Avagliano, No. 80-2070;  
Avagliano v. Sumitomo Shoji America, Inc., No. 81-24.

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether Article VIII(1) of the Friendship, Commerce and Navigation Treaty between the United States and Japan provides a defense to a Title VII employment discrimination suit against an American subsidiary of a Japanese company.

I

Petitioner, Sumitomo Shoji America, Inc., is a New York corporation and a wholly-owned subsidiary of Sumitomo Shoji Kabushiki Kaisha, a Japanese general trading company or sogo shosha.<sup>1</sup> Respondents are past and present female secretarial

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Footnote(s) 1 will appear on following pages.

To: Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **The Chief Justice**

Circulated: \_\_\_\_\_

Recirculated: **JUN 1 1982**

*(Printed)*  
 1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 80-2070 AND 81-24

SUMITOMO SHOJI AMERICA, INC., PETITIONER  
 80-2070  
 v.  
 LISA M. AVAGLIANO ET AL.

LISA M. AVAGLIANO, ET AL., PETITIONERS  
 81-24  
 v.  
 SUMITOMO SHOJI AMERICA, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE SECOND CIRCUIT

[June —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the  
 Court.

We granted certiorari to decide whether Article VIII(1) of the Friendship, Commerce and Navigation Treaty between the United States and Japan provides a defense to a Title VII employment discrimination suit against an American subsidiary of a Japanese company.

I

Petitioner, Sumitomo Shoji America, Inc., is a New York corporation and a wholly-owned subsidiary of Sumitomo Shoji Kabushiki Kaisha, a Japanese general trading company or *sogo shosha*.<sup>1</sup> Respondents are past and present female

<sup>1</sup>General trading companies have been a unique fixture of the Japanese economy since the Meiji era. These companies each market large numbers of Japanese products, typically those of smaller concerns, and also have a large role in the importation of raw materials and manufactured

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

CHAMBERS OF  
THE CHIEF JUSTICE



June 2, 1982

Re: No. 80-2070, 81-24 - Sumitoma Shoji America, Inc. v.  
Avigliano

Dear Lewis:

I see no problem in accommodating your thoughts.

Regards,

Justice Powell

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 2, 1982

Re: No. 80-2070, 81-24 - Sumitoma Shoji America, Inc. v.  
Avigliano

Dear Bill:

I see no problem in accommodating your thoughts.

Regards,



Justice Brennan



pp 8-9, 13, 5

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

Circulated: \_\_\_\_\_

Recirculated: JUN 3 1982

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 80-2070 AND 81-24

SUMITOMO SHOJI AMERICA, INC., PETITIONER  
80-2070  
v.  
LISA M. AVAGLIANO ET AL.

LISA M. AVAGLIANO, ET AL., PETITIONERS  
81-24  
v.  
SUMITOMO SHOJI AMERICA, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[June —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the  
Court.

We granted certiorari to decide whether Article VII (1) of  
the Friendship, Commerce and Navigation Treaty between  
the United States and Japan provides a defense to a Title VII  
employment discrimination suit against an American subsidi-  
ary of a Japanese company.

I

Petitioner, Sumitomo Shoji America, Inc., is a New York  
corporation and a wholly-owned subsidiary of Sumitomo  
Shoji Kabushiki Kaisha, a Japanese general trading company  
or *sogo shosha*.<sup>1</sup> Respondents are past and present female

<sup>1</sup>General trading companies have been a unique fixture of the Japanese  
economy since the Meiji era. These companies each market large num-  
bers of Japanese products, typically those of smaller concerns, and also  
have a large role in the importation of raw materials and manufactured

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

CHAMBERS OF  
THE CHIEF JUSTICE

MEMORANDUM TO THE CONFERENCE

RE: Case Held for Sumitomo Shoji America v. Avagliano, No. 80-2070, and Avagliano v. Sumitomo Shoji America, No. 81-24.

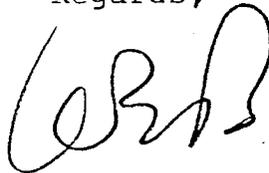
Spieß v. C. Itoh & Co., No. 81-1496

This case involves the same statutory and treaty provisions as Sumitomo. Petrs are United States citizens employed by respondent, a New York corporation and a wholly-owned subsidiary of a Japanese company. Petrs brought this suit under Title VII claiming that resp discriminated in its employment and promotional practices against non-Japanese employees. Resp moved to dismiss the suit, claiming that Article VIII(1) of the Friendship, Commerce and Navigation Treaty between the United States and Japan gave it the absolute right to hire only Japanese nationals in management positions and to compensate them as it saw fit. The DC denied the motion, holding that as a New York corporation, C. Itoh & Co. was not a company of Japan entitled to Article VIII(1) protection.

A divided CA5 panel reversed. The court first held that C. Itoh & Co. was a company of Japan under the Treaty. The court then held that the Treaty provisions immunized the company's practices from Title VII scrutiny.

This case is clearly controlled by Sumitomo. I therefore recommend that we grant the petition, vacate the CA5 judgment and remand for reconsideration in light of Sumitomo Shoji America v. Avagliano, No. 80-2070, and Avagliano v. Sumitomo Shoji America, No. 81-24. ✓

Regards,



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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 2, 1982

Re: 80-2070--Sumitomo Shoji America, Inc. v.  
Avagliano  
81-24--Avagliano v. Sumitomo Shoji America,  
Inc.

Dear Chief:

I agree that Sumitomo Shoji America, Inc. is not a company of Japan for purposes of Article VIII(1) of the Friendship, Commerce and Navigation Treaty, and am prepared to join your opinion. My only concern is that the opinion may be read to suggest that Article VIII(1) has no part whatsoever to play in any proceedings on remand. Isn't it possible, however, that the provision may be relevant insofar as it is argued that Sumitomo's parent, which is a company of Japan, has played a role in the selection of the top-level managerial positions at Sumitomo? See Brief for the United States as amicus curiae 21-22. As such, would it not be advisable to note at some point in the opinion that we have no occasion to consider whether Sumitomo may assert any treaty rights of its parent, and that the courts below may take this issue up on remand? If you can make that addition, please join me.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 3, 1982

RE: Nos. 80-2070 & 81-24 Sumitomo Shoji America, et al.  
v. Avagliano, et al.

Dear Chief:

Please join me in your recirculation of June 3, 1982.

Sincerely,



The Chief Justice  
cc: The Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 29, 1982

Re: 80-2070 - Sumitomo Shoji America,  
Inc. v. Avagliano

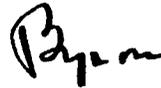
81-24 - Avagliano v. Sumitomi Shoji  
America, Inc.

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Dear Chief,

I agree.

Sincerely yours,



The Chief Justice

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cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 9, 1982

Re: Nos. 80-2070 and 81-24 - Sumitomo Shoji America v.  
Avagliano and Avagliano v. Sumitomo Shoji America

Dear Chief:

Please join me.

Sincerely,

*T.M.*  
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 7, 1982

Re: No. 80-2070 - Sumitomo Shoji America, Inc. v. Avigliano  
No. 81-24 - Avigliano v. Sumitomo Shoji America, Inc.

Dear Chief:

Please join me in your recirculation of June 3.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 31, 1982

80-2070 Sumitomo Shoji v. Avagliano  
81-24 Avagliano v. Sumitomo Shoji

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 4, 1982

Re: No. 80-2070 Sumitomo Shoji America v. Avagliano  
81-24 Avagliano v. Sumitomo Shoji America

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

1-11-82

June 1, 1982

Re: No. 80-2070 - Sumitomo Shoji America, Inc. v. Avagliano; and No. 81-24 - Avagliano v. Sumitomo Shoji America, Inc.

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 2, 1982 SR

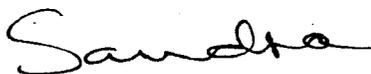
No. 80-2070 Sumitomo Shoji America, Inc.  
v. Avigliano  
No. 81-24 Avigliano v. Sumitomo Shoji  
America, Inc.

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Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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