

Article Abstract

Is *Charming Betsy* Losing Her Charm? Construing U.S. Statutes Consistently with International Trade Agreements and the *Chevron* Doctrine¹

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Recent cases involving an agency's interpretation of international trade statutes have raised fresh questions about the proper scope of the canon of statutory construction, known as *Charming Betsy*, that an "act of Congress ought never be construed to violate the law of nations, if any other possible construction remains." This Article, to be published in January 2007 in the *Emory International Law Review*, analyzes the conflict between *Charming Betsy*, which requires courts to construe statutes consistently with international law, and the *Chevron* doctrine, under which courts must defer to agency's reasonable interpretation of an ambiguous statute. The Article focuses on litigation involving the U.S. government's "zeroing" policy under the antidumping laws, which has exposed a split among U.S. courts and international dispute resolution panels about the appropriate role of the *Charming Betsy* canon.

While some scholars have written about the interplay between *Charming Betsy* and *Chevron* in the international trade context, this Article attempts to provide a more comprehensive analysis, and details ways in which courts might insert *Charming Betsy* into the famous two-step *Chevron* inquiry. The Article examines a 2005 opinion in which the United States Court of Appeals for the Federal Circuit sustained the U.S. Department of Commerce's construction of a statute under *Chevron* despite a World Trade Organization ("WTO") panel's finding that the agency violated the WTO/GATT agreements. The Article argues that the *Charming Betsy* canon should be applied in a way that ensures that agency constructions of statutes do not violate binding obligations under international treaties such as the WTO/GATT, and that therefore the canon should act as a limitation on *Chevron* deference.

I argue that *Charming Betsy* seems likely to be a recurring issue in future litigation involving agency decision-making, particularly in cases under the international trade laws in which WTO Dispute Settlement Body ("DSB") reports are at issue. Though the Federal Circuit has held that DSB reports, which interpret U.S. treaty obligations under the WTO/GATT, are "not binding" on U.S. courts, a NAFTA panel held in 2005 that courts should turn to such DSB reports when construing U.S. law, and that *Charming Betsy* should be applied in concert with *Chevron*. The Article examines these contrasting views in detail, analyzing the relationship between the WTO/GATT and U.S. law and the role of non-self-executing treaties when interpreting U.S. law. I argue that courts should consider the opinions of DSB reports under the *Charming Betsy* canon and I suggest a possible approach for doing so. I include discussion of the most recent developments on this topic, including of a July 2006 WTO Appellate Body report which declared that the U.S. "zeroing" policy was a violation of the WTO/GATT.

¹ 20 EMORY INT'L L. REV. (forthcoming January 2007).