

No. 24A289

In the Supreme Court of the United States

SAHA THAI STEEL PIPE PUBLIC COMPANY LIMITED,
Petitioner,

v.

WHEATLAND TUBE COMPANY,
Respondent.

**ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT**

**OPPOSITION TO SAHA THAI STEEL PIPE PUBLIC COMPANY
LIMITED'S APPLICATION FOR EXTENSION OF TIME TO
FILE A PETITION FOR WRIT OF CERTIORARI**

TO THE HONORABLE CHIEF JUSTICE JOHN G. ROBERTS, JR.
AS CIRCUIT JUSTICE FOR THE FEDERAL CIRCUIT

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INTRODUCTION

Wheatland Tube Company (“Wheatland”)¹ opposes the application filed by Saha Thai Steel Pipe Public Company Limited (“Saha Thai”) requesting a 60-day extension of time to file a petition for a writ of certiorari. Rule 13.5 of the Rules of this Court states that “{a}n application to extend the time to file a petition for a writ of certiorari is not favored.” More importantly, Saha Thai’s application fails to establish that “good cause” exists such that any extension, let alone the maximum allowable extension of sixty (60) days, is appropriate. As demonstrated below, Saha Thai’s desire for additional time to file a petition for a writ of certiorari does not constitute good cause within the meaning of Rule 13.5 of the Rules of this Court. Moreover, any extension would prejudice Wheatland as a domestic producer within an industry that is entitled to the remedy afforded under U.S. antidumping law in the form of duties on unfairly traded and injurious imports of pipes and tubes from Thailand.

BACKGROUND

The U.S. antidumping law provides for “the application of remedial duties to foreign goods sold, or likely to be sold, in the United States at less than fair value.” *JBF RAK LLC v. United States*, 790 F.3d 1358, 1362 (Fed. Cir. 2015) (citing 19 U.S.C. § 1673(1)). Generally, foreign goods are sold at less than fair value, or dumped, when foreign producers or exporters unfairly sell merchandise in the

¹ In accordance with Rule 29.6 of the Rules of this Court, Wheatland states that it is not a publicly traded company and that more than 10 percent of its stock is owned by its parent company, Zekelman Industries.

United States at prices below normal value. *U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1353 (Fed. Cir. 2010) (quoting 19 U.S.C. § 1677(35)(A)), *cert. denied*, 565 U.S. 821 (2011).

Historically, Saha Thai has shipped large volumes of standard pipe to the United States that fall within the scope of products covered by the antidumping duty order issued by the U.S. Department of Commerce (“Commerce”) in 1985 on certain circular welded carbon steel pipes and tubes from Thailand. Commerce has frequently selected Saha Thai as a respondent in annual reviews of the antidumping duty order to adjust the rate of dumping duties based on the company’s pricing practices.

Following Commerce’s review covering the 2016–2017 period, the antidumping duty rate applicable to imports of Saha Thai’s merchandise increased from 1.36 percent to 28.00 percent. *Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 82 Fed. Reg. 46,961 (Dep’t Commerce Oct. 10, 2017); *Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 83 Fed. Reg. 51,927 (Dep’t Commerce Oct. 15, 2018). Almost immediately, Saha Thai ceased shipping standard pipe bearing a single stencil indicating compliance with American Society for Testing & Materials specifications and began shipping pipe that was “dual-stenciled” as meeting the American Society for Testing & Materials specifications for standard pipe as well as the American Petroleum Institute specifications for line pipe.

In January 2019, Wheatland and other U.S. producers alerted Commerce that imports of Saha Thai’s dual-stenciled pipe were avoiding the payment of antidumping duties, thereby frustrating the relief provided by U.S. law. Commerce conducted an inquiry, determined that Saha Thai’s dual-stenciled pipe was covered by the antidumping duty order, and instructed U.S. Customs and Border Protection to collect the applicable antidumping duties on imports of such merchandise.

Saha Thai appealed Commerce’s final scope ruling to the U.S. Court of International Trade (“CIT”). The CIT remanded the scope ruling to the agency, which, under protest, determined in a remand proceeding that Saha Thai’s dual-stenciled pipe fell outside the scope of the order. Wheatland appealed the CIT’s decision, and the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) reversed the lower court’s judgment and reinstated Commerce’s original determination that the antidumping duty order covers Saha Thai’s dual-stenciled pipe.

The judgment of the Federal Circuit was entered on May 15, 2024. Subsequently, Saha Thai filed a combined petition for panel rehearing and rehearing *en banc* that was denied on July 24, 2024. Pursuant to Rules 13.1 and 13.3 of the Rules of this Court, the deadline to file a petition for a writ of certiorari is October 22, 2024.

ARGUMENT

According to Rule 13.5 of the Rules of this Court, the deadline for Saha Thai to file a petition for a writ of certiorari may be extended for a period not exceeding

sixty (60) days if “good cause” is shown, but an application for such an extension “is not favored.” Saha Thai’s application requesting a 60-day extension is not supported by good cause and must be denied.

Saha Thai claims that good cause exists “for several reasons,” including: (1) a decision by the law firm representing Saha Thai to add counsel from the firm’s appellate litigation department to prepare the forthcoming petition for writ of certiorari; (2) the attorney (or attorneys) from the firm’s appellate litigation department would benefit from additional time to analyze the issues and consult with attorneys from the firm’s trade law department; and (3) attorneys from the firm’s trade law department have had restricted availability because of impending deadlines in other matters and a personal medical procedure. Saha Thai Application at 6–9. None of these reasons satisfies the good cause standard.

First, there is no indication that the addition of counsel from the law firm’s appellate litigation department was an unforeseeable occurrence. It is not uncommon for a law firm to shift the responsibility of preparing a petition for writ of certiorari from one practice group to other members within the firm with experience practicing before the Supreme Court. While Saha Thai’s application states that it has added “new” appellate counsel, it appears that counsel of record is an appellate lawyer within the same law firm as the trade law department. Similar requests have been denied when appellate counsel has *withdrawn* from the case. *Madden v. Texas*, 498 U.S. 1301, 1304 (1991) (Scalia, Circuit Justice). The same reasoning applies when appellate counsel has been *added* to the case. In fact, the

timing of the decision to add appellate counsel was completely within the law firm's control.

Second, neither the perceived complexity of the case nor the benefit of additional time to consult with the law firm's trade law attorneys satisfies the good cause standard. Applications for extensions have been denied when the basis for the request is a "desire for additional time to research constitutional issues" because "{t}he same reason could be adduced in virtually all cases." *Kleem v. INS*, 479 U.S. 1308, 1308 (1986) (Scalia, Circuit Justice). "{A}ll applicants can honestly claim that they would benefit from additional time to prepare a petition for certiorari." *Penry v. Texas*, 515 U.S. 1304, 1305–1306 (1995) (Scalia, Circuit Justice). Additionally, since rehearing was sought below, the existing deadline provided a total of five months to review the opinion of the Federal Circuit. *Id.* at 1306. Counsel's claim that it would benefit from further advice and consultation with the trade law department also has been found to be insufficient to establish good cause. *Madden*, 498 U.S. at 1304 ("{A}ll petitioners can honestly claim that they would benefit from additional advice and consultation.").

Third, the workload and travel schedule of attorneys from the firm's trade law department do not constitute good cause. An "overextended caseload is not 'good cause shown,' unless it is the result of events unforeseen and uncontrollable by both counsel and client." *Mississippi v. Turner*, 498 U.S. 1306, 1306 (1994) (Scalia, Circuit Justice). The majority of the matters included in the table on pages 7 and 8 of Saha Thai's application were reasonably foreseeable at the time judgment was

entered in May or when rehearing was denied in July. Antidumping duty investigations and reviews proceed according to a timeframe set by statute. The firm's trade law department is very familiar with these types of proceedings and could have foreseen the need to devote time and resources to each of the submissions referenced in the table. Regardless, counsel of record has taken primary responsibility for preparing the petition for a writ of certiorari and cannot point to the workload of the firm's trade law department to establish good cause. Likewise, counsel of record cannot demonstrate good cause based on a medical event impacting the availability of a single attorney in the trade law department when there are other attorneys available to engage on the matter.

Finally, Wheatland strongly disagrees with Saha Thai's statement that "Wheatland will not be prejudiced by this extension because the only effect of any potential delay resulting from an extension is that the determination of any potential liability of Saha Thai, which would be owed only *to the U.S. government*, may be deferred if the Court of International Trade were to enter a stay pending proceedings in this Court." Application at 9. At least one appeal at the CIT has, in fact, been stayed pending the final outcome in this case. *Blue Pipe Steel Center Co. v. United States*, Ct. No. 21-00081, ECF No. 67 (Ct. Int'l Trade Aug. 16, 2024) (attached hereto as Exhibit A). Saha Thai has also requested a stay of another appeal at the CIT that will do nothing but further delay final duty liability on Saha Thai's merchandise that entered the United States five or more years ago in 2018 and 2019. *Saha Thai Steel Pipe Public Company Limited v. United States*, Ct. No.

21-00049, ECF No. 67 (Ct. Int'l Trade Sept. 26, 2024) (attached hereto as Exhibit B).

The fact that antidumping duties are paid to the U.S. government does not mean that Wheatland would not be prejudiced by the requested extension of time. Congress enacted the antidumping law “to create a regulatory scheme that remedies the harm unfair trade practices cause” and to “level the playing field” so that domestic industries can compete against imports that are sold at dumped prices. *Guangdong Wireking Housewares & Hardware Co. v. United States*, 745 F.3d 1194, 1203 (Fed. Cir. 2014). The antidumping law, and the remedial duties it imposes, thus “protect United States industries against the domestic sale of foreign manufactured goods at prices below the fair market value of those goods in the foreign country.” *Sango Int’l, L.P. v. United States*, 484 F.3d 1371, 1372 (Fed. Cir. 2007). In this way, the antidumping law has a “curative purpose” and a “remedial intent.” *Id.* Indeed, Wheatland had standing to intervene as of right when Saha Thai pursued litigation at the CIT because Wheatland is a domestic interested party that was a party to the Commerce proceeding in question. 28 U.S.C. § 2631(j)(1)(B). The law recognizes that Wheatland has a stake in the matter and would be adversely affected or aggrieved by any decision that disturbs the judgment of the Federal Circuit – or any decision that would delay the relief to which the U.S. domestic industry is entitled.

* * *

CONCLUSION

For all of these reasons, Saha Thai's disfavored application requesting a 60-day extension of time for to file a petition for a writ of certiorari does not satisfy the good cause standard and should be denied.

Respectfully submitted,

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September 27, 2024

Counsel for Wheatland Tube Company

EXHIBIT A

UNITED STATES COURT OF INTERNATIONAL TRADE

BLUE PIPE STEEL CENTER CO.,
LTD.,

Plaintiff,

v.

UNITED STATES,

Defendant,

and

WHEATLAND TUBE CO. AND
NUCOR TUBULAR PRODUCTS, INC.,

Defendant-Intervenors.

Before: Stephen Alexander Vaden,
Judge

Court No. 1:21-cv-00081 (SAV)

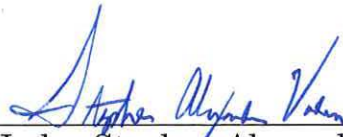
ORDER

This case was previously stayed pending the United States Court of Appeals for the Federal Circuit's disposition of *Saha Thai Steel Pipe Public Co., Ltd. v. United States*, No. 22-2181. That stay expired when the Federal Circuit issued its mandate in *Saha Thai* on July 31, 2024. On consideration of the parties' Joint Status Report, ECF No. 66, it is hereby **ORDERED** that this case is **STAYED** until one of the following conditions is met:

- (1) Saha Thai notifies this Court that it does not intend to seek certiorari;
- (2) The deadline for Saha Thai to seek certiorari expires on October 22, 2024, or any later date that the Supreme Court of the United States sets; or

(3) The Supreme Court of the United States resolves the *Saha Thai* case.

SO ORDERED.



Judge Stephen Alexander Vaden

Dated: August 16, 2024
New York, New York

EXHIBIT B

UNITED STATES COURT OF INTERNATIONAL TRADE

Before: The Honorable Stephen A. Vaden, Judge

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SAHA THAI STEEL PIPE PUBLIC COMPANY)	
LIMITED,)	
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Plaintiff,)	
)	
v.)	
)	
UNITED STATES,)	Court No. 21-00049
)	
Defendant,)	
)	
WHEATLAND TUBE,)	
)	
Defendant-Intervenor.)	
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MOTION TO STAY PROCEEDINGS

Pursuant to Rule 7(b) of the United States Court of International Trade, Plaintiff Saha Thai Steel Pipe Public Company (“Saha Thai”) respectfully requests this Court to stay proceedings in this action pending a final and conclusive disposition of *Saha Thai Steel Pipe Pub. Co. v. United States*, Fed. Cir. Appeal No. 22-2181 (“*Saha Thai Scope Appeal*”). As evidenced by the attached, Saha Thai has made a decision to file a petition for writ of certiorari to the United States Supreme Court seeking to appeal the Federal Circuit’s decision that Saha Thai respectfully believes was wrongly decided. *Saha Thai Scope Appeal* concerns an issue directly related to the Commerce Department’s remand proceeding and therefore might obviate the need for such proceeding.

Saha Thai thus requests this stay in the interests of judicial economy and conserving the parties’ resources, and represents that a stay will not cause undue harm or prejudice.

Indeed, we note that, in the parallel proceeding *Blue Pipe Steel Center Co., Ltd. v. United States* (Case No. 21-cv-00081) (“*Blue Pipe*”), the case was stayed pending resolution of *Saha Thai Scope Appeal*. Upon reactivation of the case, and consideration of the Joint Status Report, considered by this Court, a new stay was ordered. *Blue Pipe*, Order Staying Case entered on 8/16/2024, (ECF 67).

The instant appeal before this Court challenges the final determination issued by the U.S. Department of Commerce in the (2018-2019) administrative review of the of the antidumping duty order on *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments, In Part; 2018-2019*, 86 Fed. Reg. 7,259 (Jan. 27, 2021) (“Final Results”). A key issue in this appeal is whether Commerce’s correctly concluded to apply adverse facts available because Saha Thai’s U.S. sales databases did not include U.S. sales of “dual-certified pipe” that Saha Thai believed we excluded from the scope of the AD Order. *See Saha Thai Compl.* (February. 2, 2021) at Count 1, ECF No. 6. As for this particular issue earlier in this proceeding, this Court and all parties previously agreed that it was best to wait until the Federal Circuit rendered its decision (in the *Saha Thai Scope Appeal*) on the dual-certified pipe scope question before determining whether Commerce needed to undertake new AD margin calculation work to include U.S. sales of dual-certified pipe.

With this motion, Saha Thai is simply asking for continuation of this same understanding and agreement; that is, the Commerce remand proceeding should wait until the dual-certified pipe scope issues has been finally resolved. As noted above (and evidenced by the attached), Saha Thai intends to file a petition for writ of certiorari. Such writ petition will be

submitted to the Supreme Court on October 22nd (the current deadline date) or December 21st, the deadline date if the Supreme Court grants Saha Thai's request for an extension of time.

Plaintiff's counsel has conferred with counsel for Defendant and Defendant-Intervenor regarding this motion. Counsel for Defendant indicated it does not oppose the motion. Counsel for Defendant-Intervenor indicated that it opposes the motion.

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). This Court has frequently found a stay to be appropriate where the outcome of another appeal will bear upon the issues in the case. See, e.g., *SKF USA, Inc. v. United States*, 36 CIT 842, 844 (Ct. Int'l Trade 2012) (finding a stay would “serve the interest of judicial economy and conserve the resources of the parties” where multiple cases raised the same general issue and “the pending litigation in the Court of Appeals is likely to affect the disposition of plaintiffs’ claim”); *RHI Refractories Liaoning Co. v. United States*, 774 F. Supp. 2d 1280, 1285 (Ct. Int'l Trade 2011) (finding “conditions favor{ed} a stay pending a final decision by the Federal Circuit,” including “promot{ing} judicial economy and preserv{ing} the resources of the parties and the court”); *An Giang Agric. & Food Imp. Exp. Co. v. United States*, 28 CIT 1671, 1675–76, 350 F. Supp. 2d 1162, 1166 (Ct. Int'l Trade 2004) (finding that, if “the effect of a stay might be to narrow and sharpen the issues” in the stayed action.).

Consistent with this Court's precedents, good cause exists to stay this proceeding. The final resolution of *Saha Thai Scope Appeal* will necessarily bear on issues in this appeal. In addition, the stay should be granted on the basis of judicial economy and conserving the parties' resources.

Specifically, this Court has ordered Commerce to no later than 120 days from the date of issuance of a final mandate in *Saha Thai Scope Appeal*, submit a Remand Redetermination in compliance with this Opinion and Order. (ECF 59).

On August 30, 2024, (a month after the mandate), Commerce issued a new Sections A-E questionnaire to Saha Thai requiring to review all details of the sales of dual-stenciled pipe that now fit the description of the products under review for the period March 1, 2018, through February 28, 2019. *Commerce Administrative Review of the Antidumping Duty Order on Circular Welded Carbon Steel Pipes and Tubes from Thailand: Request for Information*, Slip Op. 22-134 (Aug. 30, 2024). The volume of work required for Saha Thai to respond to such a large questionnaire and for Commerce to review the collected information is enormous. Saha Thai notes that the remand investigation requires gathering information that is more than 5 years old. During the past 5 years, some of the staff of Saha Thai has changed and therefore need to become familiar with the documents and investigation process. Similarly, Commerce will need to verify information that dates back to more than 5 years to prepare its Draft Remand redetermination. The interests of the Court and judicial efficiency weigh in favor of a stay due to the possibility that the Supreme Court accepts the case and overturns *Saha Thai Steel Pipe Pub. Co. v. United States*, 101 F.4th 1310 (Fed. Cir. 2024).

In the event the petition of certiorari is denied, the parties will file a new joint status report informing the Court on the timing to complete the Commerce remand proceeding.

For these reasons, Plaintiff requests that the Court stay further proceedings in this action pending a decision by the Supreme Court of the United States on the petition for writ of certiorari and judgment if the case is accepted.

Respectfully submitted,

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Saha Thai Steel Pipe Public Company

Dated: September 26, 2024

UNITED STATES COURT OF INTERNATIONAL TRADE

Before: The Honorable Stephen A. Vaden, Judge

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SAHA THAI STEEL PIPE PUBLIC COMPANY)	
LIMITED,)	
)	
Plaintiff,)	
)	
v.)	
)	
UNITED STATES,)	Court No. 21-00049
)	
Defendant,)	
)	
WHEATLAND TUBE,)	
)	
Defendant-Intervenor.)	
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PROPOSED ORDER

This case was previously stayed pending the United States Court of Appeals for the Federal Circuit’s disposition of *Saha Thai Steel Pipe Public Co., Ltd. v. United States*, No. 22-2181. That stay expired when the Federal Circuit issued its mandate in Saha Thai on July 31, 2024. On consideration of Plaintiffs’ Motion To Stay Proceedings pending a final and conclusive disposition of all proceedings, including a writ for certiorari before the U.S. Supreme Court, it is hereby:

ORDERED that the motion is **GRANTED**; and it is further

ORDERED that these proceedings are stayed pending a final and conclusive disposition of all proceedings, any and all appeals and appeal periods, in *Saha Thai Steel Pipe Pub. Co. v. United States*, Fed. Cir. Appeal No. 22-2181, including final resolution of the case by the U.S. Supreme Court.

ORDERED that the parties shall, within 14 days of the denial of the petition of certiorari or final disposition of the case by the United States Supreme Court, file a joint status report informing the Court of their plan for disposition of this case.

Stephen A. Vaden, Judge,

Date: _____