No. 24-696

IN THE

Supreme Court of the United States

SAHA THAI STEEL PIPE PUBLIC COMPANY LIMITED,

Petitioner,

v.

WHEATLAND TUBE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF OF RESPONDENT WHEATLAND TUBE COMPANY IN OPPOSITION

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QUESTION PRESENTED

Whether the court below erred in holding that substantial evidence supported the United States Department of Commerce's determination that pipe meeting the physical characteristics of, and stenciled to indicate compliance with, the industrial specifications for "standard" pipe is not removed from the scope of the antidumping duty order on standard pipe from Thailand if it is also stenciled to indicate compliance with an additional industrial specification for "line" pipe.

PARTIES TO THE PROCEEDING

The parties to the proceeding are as follows: (1) Petitioner Saha Thai Steel Pipe Public Company Limited; and (2) Respondent Wheatland Tube Company.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

In accordance with United States Supreme Court Rule 29.6, Wheatland Tube Company 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.

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Pursuant to United States Supreme Court Rule 15, Respondent Wheatland Tube Company ("Wheatland") hereby submits this brief in opposition to the petition for a writ of certiorari filed by Petitioner Saha Thai Steel Pipe Public Company Limited ("Saha Thai").

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Federal Circuit (Pet. App. 1a–64a) is reported at 101 F.4th 1310. The order of the Federal Circuit denying Saha Thai's petition for panel rehearing and rehearing en banc (Pet. App. 67a–68a) is unreported.

The opinions of the United States Court of International Trade are reported at 592 F. Supp. 3d 1299 (Pet. App. 69a–99a) and 547 F. Supp. 3d 1278 (Pet. App. 100a–146a).

JURISDICTION

The United States Court of Appeals for the Federal Circuit entered judgment on May 15, 2024 (Pet. App. 1a–64a). Saha Thai's petition for panel rehearing and rehearing en banc was denied on July 24, 2024 (Pet. App. 67a–68a). On October 1, 2024, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including December 21, 2024, and Saha Thai's petition was filed on that date. Saha Thai invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

I. Legal Framework for Defining the Class or Kind of Foreign Merchandise in Antidumping Proceedings

The U.S. trade laws authorize the imposition of duties to address unfair trade practices. In particular, Section 731 of the Tariff Act of 1930, as amended (codified at 19 U.S.C. § 1673), calls for the imposition of antidumping duties on imports of a class or kind of foreign merchandise that is sold, or is likely to be sold, in the United States at less than its fair value (referred to as "dumping") and that has materially injured, or threatens material injury to, a domestic industry. Under the statutory scheme, Congress established a dual-agency framework that gives Commerce and the United States International Trade Commission (the "Commission") "separate and different, although related, duties and responsibilities in the administrative process by which dumping investigations are conducted and antidumping orders are issued." *Mitsubishi Elec. Corp. v. United States*, 898 F.2d 1577, 1584 (Fed. Cir. 1990).

Commerce is the agency designated as the "administering authority" of the antidumping law. 19 U.S.C. § 1677(1). Congress vested Commerce with the authority to initiate an antidumping investigation in response to a petition filed on behalf of a domestic industry requesting relief from dumped imports. 19 U.S.C. § 1673a(b)–(c). When an antidumping investigation is initiated, Commerce investigates whether "a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value." 19 U.S.C. § 1673(1). Before it can make this determination, as a threshold matter, Commerce must define the "class

or kind of foreign merchandise" that is within the scope of the investigation (referred to as "subject merchandise").

Commerce generally relies on the petition's description of the imported merchandise that is allegedly harming the domestic industry. However, Commerce may make changes to the scope during the course of the investigation to ensure that the subject merchandise is described in a way that is administrable, reflects the intent of the petitioning industry, and prevents evasive practices. *See MS Int'l, Inc. v. United States*, 32 F.4th 1145, 1151–52 (Fed. Cir. 2022); *see also Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538, 555 (Ct. Int'l Trade 1988) ("{Commerce} has been vested with authority to administer the antidumping laws in accordance with the legislative intent. To this end, {Commerce} has a certain amount of discretion to expand the language of a petition to encompass the literal intent of the petition, not to the exclusion of other factors, but certainly, with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law."), *aff'd*, 898 F.2d 1577 (Fed. Cir. 1990). Commerce makes an affirmative final determination if it finds that the class or kind of merchandise described in the scope of the investigation was sold at dumped prices in the United States.

For its part, the Commission investigates whether a domestic industry is materially injured, or is threatened with material injury, "by reason of imports of *that* merchandise or by reason of sales (or the likelihood of sales) of *that* merchandise for importation." 19 U.S.C. § 1673(2) (emphases added). The word "that" refers back to the "class or kind of foreign merchandise" that Commerce defined in its investigation. In other words,

the Commission's investigation is statutorily required to be based on the impact of the imported products within the scope of Commerce's investigation. *Kyocera Solar, Inc. v. U.S. Int'l Trade Comm'n*, 844 F.3d 1334, 1338–40 (Fed. Cir. 2016).

If the Commission makes an affirmative final material injury determination, the investigation phase concludes and Commerce publishes an antidumping duty order. 19 U.S.C. § 1673e(a). The order "includes a description of the subject merchandise, in such detail as the administering authority deems necessary{.}" 19 U.S.C. § 1673e(a)(2). This written description (referred to as the order's "scope") describes the physical characteristics (*e.g.*, material, dimensions, industry specifications) that distinguish subject merchandise from nonsubject merchandise, and it expressly states any exclusions from the scope. Antidumping duties apply to all imports of merchandise that meet the scope's description of subject merchandise.

II. Legal Framework for Scope Rulings

Scope language pertains to a class or kind of goods and must be written in general terms. *Meridian Prods., LLC v. United States*, 851 F.3d 1375, 1379 (Fed. Cir. 2017). Consequently, after an antidumping duty order is published, questions may arise as to whether a particular product is covered by the scope of an antidumping duty order. To address such questions, Congress gave Commerce the authority to make determinations that clarify "whether a particular type of merchandise is within the class or kind of merchandise described in an existing … antidumping … duty order." 19 U.S.C. § 1516a(a)(2)(B)(vi).

When Commerce is confronted with a scope question, it follows the procedures and analytical framework set forth in its implementing regulation. 19 C.F.R. § 351.225.[1] The first step in considering whether a particular product is covered by the scope of an antidumping duty order is the language of the order itself. *Meridian*, 851 F.3d at 1381. The scope language is the "cornerstone" of the analysis and is of "paramount" importance. *Shenyang Yuanda Aluminum Indus. Eng'g Co. v. United States*, 776 F.3d 1351, 1354 (Fed. Cir. 2015); *King Supply Co. v. United States*, 674 F.3d 1343, 1345 (Fed. Cir. 2012).

Commerce may read the scope language with the aid of other materials listed under paragraph (k)(1) in 19 C.F.R. § 351.225 (referred to as the "(k)(1) materials"), which consist of the petition, the investigation, and determinations of Commerce (including prior scope rulings) as well as the Commission. 19 C.F.R. § 351.225(k)(1). However, the (k)(1) materials do not control the inquiry and are not a substitute for the scope language. *Meridian*, 851 F.3d at 1382. Under no circumstance may Commerce read the scope language in a manner that is contrary to its terms. *Id.*

1. In 2021, Commerce revised the regulation governing scope matters in antidumping and countervailing duty proceedings. *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 Fed. Reg. 52,300 (Dep't Commerce Sept. 20, 2021). The amended version of the regulation was not in effect at the time the contested scope ruling was issued.

III. Administrative Proceedings

A. The Original Investigation and Antidumping Duty Order on Imports from Thailand

In 1985, a coalition of domestic producers (including Wheatland) filed a petition requesting the imposition of antidumping duties on imports of circular welded carbon steel pipes and tubes from Thailand. Pet. App. 5a. The petition specifically identified Saha Thai as a Thai manufacturer that supplied customers in the United States with the allegedly dumped pipes and tubes. *Id.*

The original scope proposed by the petition described the imported merchandise as "certain circular welded carbon steel circular pipes and tubes, .375 inch or more but not over 16 inches in outside diameter" and of any wall thickness. Pet. App. 6a–7a. These physical characteristics were used to describe products known in the industry as "standard pipe" that is generally produced to American Society of Testing and Materials ("ASTM") specifications *and* "line pipe" that is generally produced to American Petroleum Institute ("API") specifications. *Id.*

The petitioning industry subsequently withdrew the portion of the proposed scope language that specifically referenced line pipe made to API specifications in Thailand. Pet. App. 7a. Notably, however, the petitioning industry did not modify the physical description of the subject merchandise or withdraw coverage with respect to *any* standard pipe made to ASTM specifications. Moreover, the petitioning industry did not modify the scope to include an express exclusion for any pipes and tubes that otherwise meet the physical description of the subject merchandise.

Commerce conducted its investigation and ultimately determined that standard pipe from Thailand was being sold at dumped prices in the United States. *Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Determination of Sales at Less Than Fair Value*, 51 Fed. Reg. 8,384 (Dep't Commerce Jan. 27, 1986). Commerce defined the "class or kind of foreign merchandise" covered by its affirmative final determination as follows:

> certain circular welded carbon steel pipes and tubes, also known as "standard pipe" or "structural tubing," which includes pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches, or any wall thickness, as currently provided in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedule of the United States Annotated (TSUSA).

Pet. App. 8a–9a.

In its parallel investigation, the Commission described the subject merchandise as "circular welded carbon steel pipes and tubes over 0.375 inch but not over 16 inches in outside diameter, which are known in the industry as standard pipes and tubes{,}" and "are most commonly produced to ASTM specifications A-120, A-53, and A-135." *Certain Welded Carbon Steel Pipes and Tubes from Turkey and Thailand*, Inv. Nos. 701-TA-253, 731-TA-252, USITC Pub. 1810 (Feb. 1986) (Final), at I-1–I-2. The Commission identified a single industry, and the injury analysis with respect to Thailand examined the injurious effect of *all* standard pipe meeting the physical description

of subject merchandise with no exclusions. *Id.* at I-1–I-25. On this basis, the Commission made an affirmative final determination and concluded that the domestic industry was "materially injured, or threatened with material injury, by reason of imports from Thailand of welded carbon steel standard pipes and tubes, which have been found by the Department of Commerce to be sold in the United States at less than fair value{.}" *Id.* at 2.

Thereafter, Commerce published the antidumping duty order on imports of standard pipe from Thailand ("Thailand Order"). *Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 51 Fed. Reg. 8,341 (Dep't Commerce Mar. 11, 1986). Commerce did not make any modifications to the scope language, which continued to cover *all* standard pipe with an outside diameter of 0.375 inch or more but not over 16 inches and of any wall thickness. *Id.* at 8,341. In 1989, Commerce updated the order's scope to:

> (1) change the phrase "also known as 'standard pipe'" to "commonly referred to in the industry as 'standard pipe' or 'structural tubing,'"
>
> (2) replace the tariff classification codes to transition to the Harmonized Tariff Schedule of the United States ("HTSUS"), and
>
> (3) add language to explain that the written description of the merchandise is dispositive and that the listed tariff classification codes are provided for convenience and Customs purposes only.

Pet. App. 13a–14a. The scope's physical description of the subject merchandise has remained the same since the filing of the petition.

B. Saha Thai's Shipments of Dual-Stenciled Standard Pipe/Line Pipe Following the 2016–2017 Administrative Review

After Commerce published the Thailand Order, Commerce conducted periodic administrative reviews of the order as part of its responsibilities as the administering authority. 19 U.S.C. § 1675(a)(1). The purpose of these reviews is to adjust the antidumping duty rates to offset the degree of dumping based on changes to the pricing practices of foreign companies that ship subject merchandise to the United States. As relevant here, Commerce conducted such a review of the Thailand Order in which Commerce adjusted Saha Thai's antidumping duty rate based on the company's sales of subject merchandise during the 2016–2017 period. In the administrative review covering the 2016–2017 period, the antidumping duty rate calculated by Commerce for Saha Thai increased significantly—from 1.36 percent to 28 percent. *Compare Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 82 Fed. Reg. 46,961, 46,962 (Dep't Commerce Oct. 10, 2017) (2015–2016 review) *with Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 Fed. Reg. 51,927, 51,928 (Dep't Commerce Oct. 15, 2018) (2016–2017 review).

As of October 2018, the higher antidumping duty rate went into effect and applied to all of Saha Thai's imports of subject merchandise into the United States.

However, almost immediately, Saha Thai ceased shipping pipes bearing a single stencil indicating compliance with ASTM specifications for standard pipe and began shipping pipes that were dual-stenciled as meeting the ASTM specifications for standard pipe as well as the API specifications for line pipe. In January 2019, Wheatland and other U.S. producers within the domestic industry alerted Commerce that imports of Saha Thai's dual-stenciled standard pipe/line pipe were avoiding the payment of antidumping duties under the Thailand Order, thereby frustrating the relief to which the domestic industry producing a competing product was entitled under U.S. law. Pet. App. 14a–15a. The domestic industry called on Commerce to fulfill its statutory duty and ensure that the antidumping duties required by the Thailand Order were applied to Saha Thai's dual-stenciled standard pipe/line pipe.

C. Commerce's Determination that Saha Thai's Dual-Stenciled Pipe Is Within the Class or Kind of Merchandise Subject to the Thailand Order

In response to Saha Thai's shift from shipping mono-stenciled standard pipe to dual-stenciled standard pipe/line pipe, Commerce determined that a scope proceeding was warranted and initiated such a proceeding. Pet. App. 15a. After issuing a preliminary ruling and considering arguments from Wheatland and Saha Thai, Commerce determined in a final ruling that the scope of the Thailand Order covered Saha Thai's standard pipe that was also stenciled as line pipe and that imports of such merchandise are subject to the imposition of antidumping duties. Pet. App. 16a.

Commerce started its analysis with the Thailand Order's scope language and found that the plain terms covered Saha Thai's dual-stenciled pipe because the pipe met the physical description of subject merchandise (*i.e.*, a circular welded pipe made of carbon steel and with an outside diameter of 0.375 inch or more but not over 16 inches). Pet. App. 16a–17a. This was undisputed. The only remaining question was whether the scope language referring to the subject merchandise using the industry term "standard pipe" encompassed Saha Thai's dual-stenciled standard pipe/line pipe. Although the scope language made no reference to line pipe, Commerce reasoned that the Thailand Order covered all standard pipe and Saha Thai's dual-stenciled standard pipe/line pipe was certified as meeting the ASTM specifications for standard pipe. Pet. App. 17a. The additional line pipe certification did not strip the pipe of its standard pipe certification.

Commerce further found that the (k)(1) materials supported its reading of the scope language. Despite the fact that line pipe from Thailand was withdrawn from the petition, the petition covered all standard pipe from Thailand and did not evince any intent to limit the scope to mono-stenciled standard pipe. Pet. App. 17a. Unlike later orders covering imports of standard pipe from different countries (*i.e.*, Brazil, Mexico, Korea, and Venezuela), the Thailand Order contained no express exclusion for dual-stenciled standard pipe/line pipe. Pet. App. 17a–18a. The explicit exclusions in other orders on standard pipe demonstrated that dual-stenciled pipe was intended to be treated differently under the Thailand Order. There was no basis to read an implicit exclusion for dual-stenciled standard pipe/line pipe from other orders into the Thailand Order.

Saha Thai argued that the scope language should be read to exclude its dual-stenciled standard pipe/line pipe because the other agency involved in antidumping duty proceedings, the Commission, stated in subsequent sunset reviews[2] that dual-stenciled standard pipe/line pipe was not within the scopes of the orders on standard pipe from various countries. Pet. App. 17a. Commerce did not view the Commissions' statement as dispositive with respect to Thailand, however, because the Commission's sunset reviews involved multiple orders, many of which contained explicit exclusions for dual-stenciled standard pipe/line pipe. Pet. App. 17a–18a. While the Commission's statement regarding dual-stenciled standard pipe/line pipe applied to the majority of the orders, it could not logically be read to create an exclusion with no textual support in the Thailand Order. Pet. App. 18a.

Accordingly, based on its reading of the scope language with the aid of the (k)(1) materials, Commerce issued a final ruling that imports of dual-stenciled standard pipe/line pipe are covered by the scope of the Thailand Order.

IV. Proceedings on Appeal

Saha Thai appealed to the United States Court of International Trade and claimed that Commerce's final

2. A sunset (or five-year) review is jointly conducted by Commerce and the Commission every five years after the publication of an antidumping duty order. 19 U.S.C. § 1675(c). In each sunset review, the two agencies must determine, respectively, whether revocation of the antidumping duty order is likely to lead to the continuation or recurrence of dumping and material injury. If either agency makes a negative determination, Commerce revokes the antidumping duty order. 19 U.S.C. § 1675(d)(2).

scope ruling was unsupported by substantial evidence and otherwise not in accordance with law. Pet. App. 126a. The Court of International Trade concluded that the issue could not be resolved, as a matter of law, based on the plain meaning of the scope language alone. Pet. App. 127a–128a. Instead, the Court of International Trade held that substantial evidence did not support Commerce's determination that dual-stenciled standard pipe/line pipe is covered by the Thailand Order. Pet. App. 128a.

According to the Court of International Trade, the (k)(1) materials—namely, the petition, the final material injury determination, and the sunset reviews—showed that dual-stenciled standard pipe/line pipe was treated as line pipe and not the standard pipe that was the subject of the Commission's final material injury determination. Pet. App. 136a–143a. The Court of International Trade held that because Commerce erred in its analysis of the (k)(1) materials, its determination unlawfully expanded the scope of the Thailand Order. Pet. App. 144a. Therefore, the Court of International Trade remanded the matter to Commerce for further consideration and to issue a determination that complied with the court's decision. Pet. App. 144a–145a.

In its remand determination, which the agency filed under protest, Commerce complied with the Court of International Trade's order and determined that dual-stenciled standard pipe/line pipe is not covered by the scope of the Thailand Order. Pet. App. 75a–76a. The remand determination expressed the agency's concern that the Court of International Trade reached its decision based on a misunderstanding of the Commission's final material injury determination and its sunset reviews.

Pet. App. 76a–77a. Wheatland expressed similar concerns with the Court of International Trade's decision and the resulting decision by Commerce to reverse course in its remand determination. Pet. App. 77a–78a. The Court of International Trade sustained the remand determination as complying with the court's remand order. Pet. App. 99a.

Wheatland appealed the Court of International Trade's judgment to the United States Court of Appeals for the Federal Circuit, arguing that Commerce's original scope ruling was correct and should have been sustained. Pet. App. 23a. The Federal Circuit agreed. It reversed the Court of International Trade's affirmance of Commerce's remand determination and held that Commerce's original scope ruling was supported by substantial evidence. Pet. App. 31a–46a. The Federal Circuit explained that there was no dispute the dual-stenciled standard pipe/line pipe met the physical characteristics described in the Thailand Order. Pet. App. 35a. In addition, because the dual-stenciling meant that the imported pipes were certified as standard pipe and complied with ASTM specifications, the reference to "standard pipe" in the Thailand Order's scope encompassed dual-stenciled standard pipe/line pipe. Pet. App. 36a.

The Federal Circuit observed that the (k)(1) materials supported Commerce's original scope ruling and did not create an unspoken exclusion for dual-stenciled standard pipe/line pipe. Pet. App. 38a–45a. In doing so, the Federal Circuit noted that the Commission's final material injury determination "described the product under its investigation and causing injury as 'standard pipe' produced to ASTM specifications." Pet. App. 43a. Because "{t}he Court of International Trade reached a

contrary conclusion that lacked support in the record and failed to give sufficient deference to Commerce under the substantial evidence standard of review," the Federal Circuit reversed the Court of International Trade's judgment and held that Commerce's original scope ruling was supported by substantial evidence. Pet. App. 45a–46a.

Judge Chen dissented and did not join the majority. Although he stated in his dissenting opinion that the issue could not be resolved as a matter of law, Pet. App. 52a, Judge Chen agreed with the Court of International Trade's analysis of the (k)(1) materials and that Commerce's original scope ruling was not supported by substantial evidence. Pet. App. 55a–64a. Put another way, Judge Chen was convinced that the (k)(1) materials only supported a reading of the Thailand Order that excluded dual-stenciled standard pipe/line pipe. Therefore, Judge Chen would have affirmed the Court of International Trade's decisions.

The Federal Circuit subsequently denied Saha Thai's request for a panel rehearing or rehearing en banc without dissent. Pet. App. 67a–68a.

REASONS FOR DENYING THE PETITION

Saha Thai's petition for a writ of certiorari concerns Commerce's ruling that dual-stenciled standard pipe/line pipe is covered by the scope of the Thailand Order. The Federal Circuit's decision upholding Commerce's scope ruling was correct and does not conflict with any decision of this Court. And because 28 U.S.C. § 1295(a)(5) gives the Federal Circuit exclusive jurisdiction over appeals from the Court of International Trade, no inter-circuit conflict is possible.

Nonetheless, Saha Thai claims that this Court's review is needed. In Saha Thai's view, the Commission did not make a material injury determination with respect to dual-stenciled standard pipe/line pipe in the original investigation that led to antidumping duties being imposed in the Thailand Order. Thus, according to Saha Thai, Commerce's scope ruling represents *ultra vires* agency action because the material injury requirement under 19 U.S.C. § 1673 was not met and the Federal Circuit erred in its review.

Saha Thai's petition should be denied. It is premised on a fundamental misunderstanding of each agency's responsibilities under the statutory framework. Congress entrusted Commerce, not the Commission, to define the class or kind of foreign merchandise in antidumping proceedings. The Commission's investigation is based on imports of the class or kind of foreign merchandise that Commerce defined in its investigation. An affirmative material injury determination generally applies to the entire class of merchandise.

Once an antidumping duty order is issued by Commerce, the scope language dictates the order's ambit. The (k)(1) materials (including the Commission's determinations) may provide important historical context, but they are not controlling and are not a substitute for the scope language. Here, after consulting the (k)(1) materials, Commerce concluded that dual-stenciled standard pipe/line pipe meets the physical characteristics of subject merchandise and is within the class or kind of merchandise covered by the Thailand Order. Such a decision does not infringe on the Commission's authority

or violate the material injury requirement in 19 U.S.C. § 1673.

Contrary to Saha Thai's assertion that the Federal Circuit's decision "broke new ground" (Pet. 15), there is nothing novel about this case. The scope language in antidumping duty orders is written in general terms and does not specifically identify each and every possible iteration of a product. Commerce concluded that the Thailand Order covers dual-stenciled standard pipe/line pipe because the product is certified as standard pipe that meets ASTM specifications and has an outside diameter of 0.375 inch or more but not over 16 inches. Nothing in the (k)(1) materials indicated that the investigation covered only mono-stenciled standard pipe. The Federal Circuit upheld Commerce's scope ruling as supported by substantial evidence, which is consistent with decisions that have upheld similar scope rulings in the past. *See, e.g.*, *Shenyang Yuanda*, 776 F.3d at 1357 ("That Yuanda's products are called 'curtain wall units,' rather than 'aluminum extrusions' does not preclude them from the scope since they otherwise meet the physical description of the subject merchandise."). There was nothing remarkable or unusual about the Federal Circuit's decision.

Simply put, Commerce's scope ruling did not unlawfully expand the Thailand Order. Saha Thai is therefore wrong that the Federal Circuit committed an error that conflicts with the United States' international treaty obligations or threatens other dual-agency statutory frameworks. For the reasons set forth below, further review is not warranted.

I. Commerce Acted Within its Statutory Authority and Did Not Violate the Material Injury Requirement of 19 U.S.C. § 1673

Saha Thai's central argument is that Commerce exceeded its statutory authority by ruling that dual-stenciled standard pipe/line pipe is covered by the Thailand Order. Pet. 25–30. Saha Thai does not dispute that the dual-stenciled standard pipe/line pipe meets the Thailand Order's physical description of subject merchandise (*i.e.*, a circular welded pipe made of carbon steel and with an outside diameter of 0.375 inch or more but not over 16 inches). Instead, Saha Thai contends that the Commission never made a material injury determination with respect to dual-stenciled standard pipe/line pipe and, as a result, the imposition of antidumping duties on such merchandise through a scope ruling violates 19 U.S.C. § 1673. This argument lacks merit for several reasons.

Saha Thai is wrong insofar as it argues that the Commission is the agency with the authority to define the class or kind of foreign merchandise in an investigation. Congress designated Commerce as the agency that is responsible for all responsibilities assigned to the "administering authority" of the antidumping law. 19 U.S.C. § 1677(1). As the administering authority, Commerce determines whether "a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value." 19 U.S.C. § 1673(1). The plain terms of this statute authorize Commerce to define the "class or kind of foreign merchandise" (*i.e.*, the subject merchandise) as part of its dumping analysis in the investigation phase of a proceeding. 19 U.S.C. § 1673(1). The Commission then determines whether a

domestic industry is materially injured, or is threatened with material injury, by reason of "that" merchandise. 19 U.S.C. § 1673(2).

Other provisions in the antidumping law make it clear that the Commission's investigation is based on the entire universe of products that Commerce describes in its definition of the subject merchandise. One example is the statute governing final determinations in antidumping investigations. Commerce makes its final dumping determination *before* the Commission makes its final injury determination. 19 U.S.C. § 1673d(a) and (b). The statutory deadlines are staggered by design. Commerce is directed to determine "whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value." 19 U.S.C. § 1673d(a)(1). For its part, the Commission is directed to determine whether a domestic industry is materially injured by reason of "imports … of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1)." 19 U.S.C. § 1673d(b)(1). An affirmative final material injury determination by the Commission presumptively applies to the entire "class or kind of foreign merchandise" subject to Commerce's affirmative final dumping determination.

The Commission cannot alter the scope of an order. There are very limited exceptions to this general rule. For example, where appropriate, the Commission's final determination may narrow the scope of products that will ultimately become subject to the antidumping duty order. Specifically, if the Commission finds in its "like product" analysis that the class or kind of foreign merchandise defined by Commerce encompasses more than a single

domestic industry, the Commission conducts a separate material injury analysis for each industry and may find that material injury exists for one industry and not the other.[3] *Cleo Inc. v. United States*, 501 F.3d 1291, 1294–96 (Fed. Cir. 2007). The resulting antidumping duty order would only cover the products for which the Commission found material injury.

This situation arose in an investigation of aluminum extrusions from China. In that investigation, the Commission identified separate domestic industries for aluminum extrusions and finished heat sinks (a specific type of aluminum extrusion designed and tested to cool electronic devices). *Aluminum Extrusions Fair Trade Committee v. United States*, 36 C.I.T. 1370, 1371–73 (2012). It then determined that the domestic aluminum extrusion industry was materially injured and that the domestic finished heat sink industry was not. *Id.* The negative final material injury determination with respect to finished heat sinks narrowed the universe of aluminum extrusions covered by the scope. When Commerce published the antidumping duty order, it "revis{ed} the scope of the subject merchandise stated in {Commerce's} Final Determination to exclude finished heat sinks from the scope of the order." *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 Fed. Reg. 30,650, 30,650 (Dep't Commerce May 26, 2011). This type of mixed result is not the norm. In the vast majority of antidumping duty investigations,

3. Conversely, when Commerce identifies more than one class or kind of foreign merchandise, the Commission may collapse them into one and perform the injury analysis with respect to a single domestic industry. *Hosiden Corp. v. Advanced Display Mfrs. of Am.*, 85 F.3d 1561, 1564–65 and 1567–69 (Fed. Cir. 1996).

the Commission identifies a single domestic industry and makes a single material injury determination that coextensively applies to the entire "class or kind of foreign merchandise" found by Commerce to be sold at less than fair value.

Here, the Commission made an affirmative final material injury determination and did not narrow the scope to exclude *any* standard pipe. In the "like product" analysis for its final determination, the Commission found a single domestic standard pipe industry and did not limit its material injury analysis to imports of mono-stenciled standard pipe from Thailand. Pet. App. 9a–10a. After conducting its material injury analysis, the Commission concluded that the domestic standard pipe industry was materially injured by dumped imports of standard pipe from Thailand. Pet. App. 12a. Unlike the example of the aluminum extrusions case discussed above, the Commission did not reach a negative determination with respect to any subset of standard pipe products. The Commission's affirmative final material injury determination thus applied to *all* standard pipe from Thailand with an outside diameter of 0.375 inch or more but not over 16 inches. Commerce made no changes to the scope when it issued the Thailand Order. *Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 51 Fed. Reg. 8,341, 8,341 (Dep't Commerce Mar. 11, 1986).

Saha Thai considers it significant that "the Commission had never made an *express* material injury determination for mono- or dual-stenciled line pipes from Thailand{.}" Pet. 3 (emphasis added). Saha Thai's argument in this regard relies on a semantic distinction between standard pipe and

dual-stenciled standard pipe/line pipe. Commerce and the Federal Circuit were correct to reject this argument. Pet. App. 16a–17a and 36a. Saha Thai's dual-stenciled standard pipe/line pipe is certified as meeting ASTM specifications and is also within the range of outside diameters for the subject merchandise covered by the scope of the Thailand Order. The additional stencil indicating compliance with API specifications did not change the fact that Saha Thai's pipe features the same physical characteristics of the class of standard pipe that is subject to the Thailand Order. Although in some cases the Commission might explicitly identify the product in question, there is no legal requirement that the Commission specifically identify and analyze each and every possible variation of the subject merchandise. This is supported by longstanding Federal Circuit precedent. *See, e.g.*, *Novosteel SA v. United States*, 284 F.3d 1261, 1269 (Fed. Cir. 2002) ("{A} petitioner need not circumscribe the entire universe of articles that might possibly fall within the order it seeks.").

Continuing its use of semantics in an attempt to draw a distinction between standard pipe and dual-stenciled standard pipe/line pipe, Saha Thai asserts that "{a} product that meets higher quality standards, such as mono- or dual-stenciled line pipes, is commonly thought of by reference to the higher quality standard, not any lesser included standards." Pet. 29. As an example, Saha Thai compares a base model luxury car with a fully loaded model luxury car and states that "no one would commonly refer to the luxury, fully loaded model by reference to the base model—even if the sticker lists all of the base features. Saha Thai unwittingly offers an example that actually *supports* Commerce's scope ruling. Assume that the base model luxury car is standard pipe and the fully

loaded model luxury car is dual-stenciled standard pipe/line pipe. Even though the fully loaded model may come with extra features, both are luxury cars and both meet the physical characteristics of the base model luxury car in all material respects.

A more apt example would be a comparison between one product and a hybrid product that combines the physical characteristics of that product as well as an additional product or products into one. One such example is a printer and an all-in-one printer with multiple functions (*e.g.*, copying, scanning, faxing). Assume that the printer is standard pipe and the all-in-one printer is dual-stenciled standard pipe/line pipe. The basic printing function for both products complies with the same industry standard, and the additional functions in the all-in-one printer comply with other industry standards. And yet both products are commonly referred to as printers, despite the fact that the more advanced all-in-one printer may have additional functions. In the same way, dual-stenciled standard pipe/line pipe may be referred to as standard pipe.

Moreover, Commerce's scope ruling with respect to dual stenciled standard pipe/line pipe is analogous to other rulings that have been upheld by the Court of International Trade and the Federal Circuit. For example, the Court of International Trade recently upheld a scope ruling that certain hybrid products were covered by the scope of the antidumping duty order on carbon steel butt-weld pipe fittings from China. *Vandewater Int'l, Inc. v. United States*, 589 F. Supp. 3d 1324 (Ct. Int'l Trade 2022). The scope described fittings with "permanent, welded connections" and distinguished subject merchandise

from fittings with other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). *Id.* at 1328. The product at issue was a fitting with a beveled edge for a permanent, welded connection on one end and a threaded or grooved end for a non-permanent connection on the other end. The Court of International Trade sustained Commerce's ruling that the hybrid product was covered by the scope as supported by substantial evidence, even though there was no explicit mention of this hybrid product during the investigation. *Id.*

Another example is the Federal Circuit's decision that upheld a scope ruling that spring lock washers meeting the specifications of the American Railway Engineering and Maintenance-of-Way Association ("AREMA washers") were covered by the antidumping duty order on helical spring lock washers from China. *United Steel and Fasteners, Inc. v. United States*, 947 F.3d 794 (Fed. Cir. 2020). The (k)(1) materials only referenced American Society of Mechanical Engineers ("ASME") specifications. *Id.* at 800. But because the scope language did not specify that subject merchandise *must* meet ASME specifications, the different industry specifications did not remove AREMA washers from the scope. *Id.* Like dual-stenciled standard pipe/line pipe, the AREMA washers possessed the physical characteristics included in the scope's description of subject merchandise. The rulings in *Vandewater* and *United Steel and Fasteners* were lawful decisions made by Commerce pursuant to its authority to determine whether a product falls within the class or kind of merchandise covered by an antidumping duty order. There was no violation of 19 U.S.C. § 1673 merely because the product at issue was not specifically identified by name in the investigation. *Shenyang Yuanda*, 776 F.3d at 1357

("That Yuanda's products are called 'curtain wall units,' rather than 'aluminum extrusions' does not preclude them from the scope since they otherwise meet the physical description of the subject merchandise.").

The requirements under 19 U.S.C. § 1673 were also met here. Contrary to Saha Thai's contentions, Commerce's scope ruling was not "a back door" (Pet. 15) for Commerce to impose antidumping duties on fairly traded imports. In the original antidumping duty investigation, Commerce found that imports of standard pipe from Thailand were being sold at dumped prices in the United States, and the Commission found that such imports materially injured the domestic standard pipe industry. Commerce concluded that dual-stenciled standard pipes/line pipes are covered by the Thailand Order because they meet the scope's physical description of the class of standard pipe that the two agencies determined were unfairly traded and caused injury to the domestic industry in the investigation. The bottom line is that Commerce did not exceed its statutory authority (or violate 19 U.S.C. § 1673), and the Federal Circuit did not condone an unlawful expansion of the scope of the Thailand Order to include a product that is not standard pipe.

II. In Upholding Commerce's Original Scope Ruling, the Federal Circuit Correctly Applied the Standard of Review and Did Not Defer to Commerce on a Question of Law

Saha Thai argues that the Federal Circuit erred in its review because it deferred to Commerce on a question of law that was not delegated to the agency, a situation in which the agency is not entitled to any deference under

this Court's decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). Pet. 15–25. Saha Thai asserts that the Federal Circuit had an independent duty to review all questions of law *de novo*. Pet. 19–20. This argument reflects a fundamental misunderstanding of the Federal Circuit's decision.

The Federal Circuit's review of Commerce's scope rulings involves mixed questions of law and fact. The question of whether the plain meaning of the scope language alone is dispositive as to the particular product at issue is a question of law reviewed *de novo*. *Meridian*, 851 F.3d at 1382. Conversely, the question of whether the product at issue meets the scope's description of subject merchandise, including Commerce's analysis of the (k)(1) materials, is a question of fact reviewed to determine whether it is supported by substantial evidence. *Id.* This is because "{a} scope ruling is a highly fact-intensive and case-specific determination." *King Supply Co. v. United States*, 674 F.3d 1343, 1345 (Fed. Cir. 2012). Thus, while Commerce is not afforded discretion on the initial legal question, Commerce is granted "substantial deference" regarding its ultimate factual determination of whether the product at issue is covered by the scope based on the relevant evidence. *Id.* at 1348.

In its decision, the Federal Circuit included a discussion of the above-described framework that guided its review. Pet. App. 23a–25a and 32a–35a. This case does not involve an issue of statutory interpretation as "{t}here is no specific statutory provision that governs the interpretation of the scope of an antidumping duty order." Pet. App. 25a (citing *Shenyang Yuanda*, 776 F.3d at 1354). The Federal Circuit correctly framed the issue

as "whether the Thailand Order on 'standard pipes' covers Saha's 'dual-stenciled pipes,' namely pipes certified concurrently as 'standard pipes' and as 'line pipes.'" Pet. App. 31a.

The analysis "begins with a review of the scope language itself" to determine if, as a matter of law, the scope language answers the scope question. Pet. App. 33a (emphases omitted). The Federal Circuit applied the correct standard to resolve this question of law and its review was consistent with *Loper Bright*. The Federal Circuit conducted a *de novo* review and did not defer to Commerce. Pet. App. 35a–37a. Its analysis was *informed* by Commerce's reading of the scope language, which this Court has explained is permissible and even encouraged. *Loper Bright*, 603 U.S. at 402–03. The Federal Circuit found there was no dispute that the dual-stenciled standard pipe/line pipe meet the physical dimensions described in the first sentence of the Thailand Order. Pet. App. 35a.

It then considered the scope language that refers to subject merchandise as "standard pipe," stating that this language "explicitly refines the universe of merchandise defined by the as-described physical characteristics{.}" Pet. App. 35a. The Federal Circuit observed that dual-stenciled standard pipes/line pipes are certified as standard pipe, suitable for standard pipe applications, and comply with ASTM specifications. Pet. App. 36a. The tariff classification for dual-stenciled standard pipes/line pipes was not determinative because, as the Federal Circuit noted, the Thailand Order expressly provides that the HTSUS codes are provided as a convenience for

Customs purposes only and that the written description of the merchandise is dispositive. Pet. App. 36a–37a.

The Federal Circuit also explained that the Thailand Order does not contain any exclusionary language and that reading an implicit exclusion for any subset of standard pipes would be contrary to the controlling description of subject merchandise. Pet. App. 37a. It is clear from the decision itself that the Federal Circuit did not simply rubber stamp Commerce's reading of the scope language (including the term "standard pipe") to encompass dual-stenciled standard pipe/line pipe. Rather, the Federal Circuit exercised its own judgment and concluded that dual-stenciled standard pipe/line pipe is facially covered by the terms of the Thailand Order.

The Federal Circuit then turned to the (k)(1) materials to discern whether they support the inclusion or an implicit exclusion of standard pipes that are dual-stenciled as line pipes. Pet. App. 38a. The agency's "analysis of the (k)(1) sources against the product in question produces 'factual findings reviewed for substantial evidence.'" *United Steel and Fasteners*, 947 F.3d at 799 (quoting *Meridian*, 851 F.3d at 1382). Accordingly, the Federal Circuit reviewed Commerce's analysis of the (k)(1) materials under the deferential substantial evidence standard of review. 19 U.S.C. § 1516a(b)(1)(B)(i). This, too, was consistent with *Loper Bright*. 603 U.S. at 392 (stating that the substantial evidence standard "mandate{s} that judicial review of agency policymaking and factfinding be deferential.").

The Federal Circuit found that substantial evidence supported Commerce's analysis of the (k)(1) materials. The Federal Circuit observed that throughout the

original antidumping duty investigation that resulted in the Thailand Order, "the same industry specifications and designations were consistently used to define standard pipes, with no qualifiers based on additional specifications the same pipes might also meet." Pet. App. 39a. The Federal Circuit further found that the historical documents contained no restriction regarding any subset of standard pipes that meet additional specifications. *Id.* The (k)(1) materials thus supported Commerce's reasoning that a pipe is standard pipe if it meets ASTM specifications. Pet. App. 40a. The Federal Circuit rejected Saha Thai's alternative interpretation of the (k)(1) materials as unreasonable because it would inject an implicit exclusion. Pet. App. 41a–45a. Even if Saha Thai's interpretation were reasonable, the Federal Circuit explained that substantial evidence allows for the possibility of drawing two inconsistent yet reasonable conclusions from the factual record. Pet. App. 45a.

Saha Thai insists that the question before the Federal Circuit was a question of law and that the Federal Circuit should have determined for itself whether the Commission's affirmative final material injury determination in the antidumping duty investigation applied to dual-stenciled standard pipe/line pipe. Pet. 19–20. This is incorrect. The Federal Circuit conducted a *de novo* review of the scope language and concluded that dual-stenciled standard pipe/line pipe is facially covered by the terms of the Thailand Order. However, an analysis of the (k)(1) materials against the product at issue is a question of fact. Judge Chen's dissent also acknowledged that the issue could not be resolved as a matter of law. Pet. App. 52a ("Because this additional certification could change how the industry commonly refers to such pipes, I do not believe we can

determine, as a matter of law, whether this interpretation is unreasonable."). The Court of International Trade shared that view as well. Pet. App. 127a–128a. Saha Thai itself notes that *Loper Bright* "distinguished legal questions from 'agency policymaking and factfinding,' which are subject to the more deferential 'substantial evidence' standard." Pet. 18. Thus, the Federal Circuit's decision gave appropriate deference to Commerce's factual assessment of the (k)(1) materials under the substantial evidence standard of review.

Saha Thai cites this Court's decision in *Guerrero-Lasprilla v. Barr* to support its position that the scope question before the Federal Circuit was a question of law. Pet. 19 (citing 589 U.S. 221 (2020)). As an initial matter, *Guerrero-Lasprilla* concerned the interpretation of the statutory term "questions of law" in a provision under the Immigration and Nationality Act. The Court concluded that "questions of law" include mixed questions of law and fact (including application of the law to settled facts) for purposes of 8 U.S.C. § 1252(a)(2)(D). Saha Thai has not demonstrated why the rationale in *Guerrero-Lasprilla* in the specific context of that statutory language would apply to judicial review of scope rulings or why Commerce's analysis of the (k)(1) materials should be reviewed *de novo* as a question of law pursuant to the decision in that case.

Furthermore, in a more recent decision, this Court clarified that mixed questions "are not all alike" and even though "a mixed question requires a court to immerse itself in facts does not transform the question into one of fact," the factual nature of the issue "suggests a more deferential standard of review." *Wilkinson v. Garland*, 601 U.S. 209, 222 (2024). Thus, at a minimum, the

question before the Federal Circuit was a mixed question of law and fact that warranted at least some deference to Commerce. Regardless, the Federal Circuit made it clear that it considered Commerce's scope ruling to be the "one reasonable conclusion" and that the court would have reached the same result based on its own judgment and reading of the scope language with the aid of the (k)(1) materials. Pet. App. 45a.

Moreover, Saha Thai is wrong that Commerce does not have specialized expertise in this context. Pet. 24. For decades, Commerce has been regarded as the "master" of the antidumping law. *Consumer Prods. Div., SCM Corp. v. Silver Reed Am., Inc.*, 753 F.2d 1033, 1039 (Fed. Cir. 1985). Indeed, Commerce is the administering authority of the antidumping law. 19 U.S.C. § 1677(1). Congress entrusted Commerce, not the Commission, to define the class or kind of foreign merchandise in antidumping proceedings. 19 U.S.C. § 1673(1). It also gave Commerce the responsibility of crafting scope language and issuing the antidumping duty order. 19 U.S.C. § 1673e(a). Furthermore, Commerce is authorized to issue scope rulings that clarify the class or kind of merchandise covered by an antidumping duty order. 19 U.S.C. § 1516a(a)(2)(B)(vi).

The responsibilities assigned to the administering authority demonstrate that Congress considered Commerce to be the agency with the expertise to determine what products fall within and outside the scope of an antidumping duty order. The antidumping law specifies the circumstances in which Commerce does not have independent authority to make such a determination. Specifically, the circumvention statute requires that Commerce notify and, if requested, consult

with the Commission before it may expand the scope of an order to include certain categories of merchandise. 19 U.S.C. § 1677j(e). This is because, unlike scope rulings, Commerce's circumvention rulings expand the scope to include merchandise that is not covered by the literal terms of the order. In such a situation, the Commission is consulted to advise Commerce of any injury concerns regarding the proposed expansion of the scope before a final circumvention ruling is issued. There is no similar type of limit on Commerce's scope ruling authority. *Russello v. United States*, 464 U.S. 16, 23 (1983) (stating that if "Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion").

III. The Federal Circuit's Decision Does Not Conflict with the United States' International Obligations or Threaten Other Dual-Agency Statutory Frameworks

Lastly, Saha Thai claims that this Court's review is needed because the supposed "error" committed by the Federal Circuit runs afoul of the United States' international obligations as set forth the World Trade Organization's Antidumping Agreement. Pet. 30–32. It argues that 19 U.S.C. § 1673 was enacted in conformity with Article 3.5 of the Antidumping Agreement and that the statute should be construed and applied in a way that does not violate the international agreement. Pet. 30–31 (citing *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804)).

The Federal Circuit's decision does not give rise to such a concern. As demonstrated above, the Commission *did* make an affirmative final material injury determination that applied to all standard pipe from Thailand. The Commission did not carve out dual-stenciled standard pipe/line pipe from its final determination in the original antidumping duty investigation. Thus, the Federal Circuit did not condone a violation of 19 U.S.C. § 1673 that simultaneously resulted in an inconsistency with the United States' obligations under the Antidumping Agreement.

Furthermore, Saha Thai incorrectly states that the Federal Circuit's decision represents a departure from how it has reviewed scope rulings for decades. Pet. 32. The Federal Circuit has issued similar decisions in the past (*e.g.*, *United Steel and Fasteners* and *Shenyang Yuanda*) that upheld affirmative scope rulings, even in cases where whatever variation of the product at issue was not expressly mentioned during the course of the original antidumping duty investigation. And Wheatland is not aware of any dispute brought by another World Trade Organization member that has claimed such a scope ruling is inconsistent with the United States' obligations under the Antidumping Agreement.

Even assuming that this case is at odds with the Antidumping Agreement (to be clear, it is not), longstanding Federal Circuit precedent has established that "{n}either the GATT nor any enabling international agreement outlining compliance therewith (e.g., the {Antidumping Agreement}) trumps domestic legislation; if U.S. statutory provisions are inconsistent with the GATT or an enabling agreement, it is strictly a matter

for Congress." *Corus Staal BV v. United States*, 395 F.3d 1343, 1348 (Fed. Cir. 2005) (citing *Suramerica de Aleaciones Laminadas, C.A. v. United States*, 966 F.2d 660, 668 (Fed. Cir. 1992) and 19 U.S.C. § 2504(a)).

For similar reasons, Saha Thai is wrong that the Federal Circuit's decision threatens the other statutory frameworks that, like the antidumping law, allocate authority between executive and independent agencies. Pet. 32–33. As already demonstrated, Commerce acted within its statutory authority when it ruled that dual-stenciled standard pipe/line pipe falls within the class or kind of merchandise covered by the Thailand Order. This ruling did not infringe the authority that Congress delegated to the Commission. Moreover, each dual-agency statutory framework is *sui generis*, and Saha Thai has not demonstrated why the balance of agency power in the realm of antidumping duties disturbs other dual-agency statutory frameworks. In fact, it cannot make any such showing, and its argument should be rejected.

* * *

CONCLUSION

For all of the reasons set forth above, Saha Thai's petition for a writ of certiorari should be denied.

Respectfully submitted,

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