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

REPLY BRIEF

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INTRODUCTION

In an obvious attempt to obfuscate the significant legal issues that warrant this Court's review, respondent distracts from the petition's questions to an irrelevant question about the physical characteristics of the merchandise at issue. The Court of International Trade did not fall for this gambit, and neither should this Court. As the Court of International Trade observed, the "primary problem in this case is not a tricky comparison between the product characteristics," but rather "that Commerce wishes to blind itself to the [Commission's] repeated pronouncements." App. 94a-95a. The majority below suffered from the same blindness, resulting in an erroneous decision that puts U.S. trade law at odds with administrative law and international trade law.

With respect to the petition's first question of whether courts owe any deference to Commerce's interpretation of what the "Commission determines" under 28 U.S.C. 1673, respondent does not dispute that interpreting the meaning of an agency's action is a legal question that must be answered independently by courts under *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369 (2024). Instead, it reframes the question in terms of whether "the product at issue meets the scope's description," and argues that Commerce's answer to that question is reviewed under the deferential substantial evidence standard. Opp'n 26. That argument presupposes that Commerce's scope ruling is supported by the Commission's material injury determination, and that therefore the only question is whether the product fits the physical

description. But that is not the case. As respondent concedes, there are times when the "Commission's final determination may narrow the scope of the products that will ultimately be subject to the antidumping duty order" because the merchandise identified by Commerce "encompasses more than a single domestic industry." Opp'n 19-20. That's the ultimate issue here: whether there has been an affirmative determination *by the Commission* that dual-stenciled line pipe materially injures the same domestic industry as standard pipe. Respondent cannot assume away that question.

Respondent is also wrong that the majority below applied its own judgment to that question. The majority instead explicitly deferred to Commerce's scope ruling, including its interpretation of the Commission's determination. App. 24a. The majority even faulted the Court of International Trade for supposedly failing "to give sufficient deference to Commerce." App. 45a. Indeed, the majority repeatedly leaned on what "Commerce explained" or what "Commerce reasoned" in concluding that the Commission's original determination and its subsequent sunset reviews supported "Commerce's reasonable interpretation" of the Thailand Order. App. 45a. That analysis is flawed because interpreting the meaning of the Commission's determination is a question of law and, under *Loper Bright*, must be reviewed independently by the courts. By following this approach, courts will ensure that Commerce does not infringe on the authority Congress purposefully delegated to the Commission. See *Humphrey's Ex'r* v.

United States, 295 U.S. 602, 629 (1935) ("The authority of Congress, in creating quasi-legislative or quasi-judicial agencies, to require them to act in discharge of their duties independently of executive control cannot well be doubted.").

As to the petition's second question of whether Commerce's scope ruling is supported by the Commission's material injury determination, respondent's concession that the Commission's determination may in some cases restrict Commerce's authority to impose antidumping duties is dispositive. Opp'n 19-20. While Commerce may initially define the class or kind of merchandise that it investigates, the Commission determines whether that merchandise injures one or multiple domestic industries. Those tasks are "separate and different." Opp'n 2 (quoting *Mitsubishi Elec. Corp.* v. *United States*, 898 F.2d 1577, 1584 (Fed. Cir. 1990)).

Until the majority's decision below, the Federal Circuit had never upheld a scope ruling without satisfying itself that it was supported by the Commission's material injury determination for the merchandise at issue. The novelty of the majority's decision is evidenced by respondent's assertion that countries have not previously claimed that a scope ruling violated the United States' corresponding international obligation under the Antidumping Agreement. That may now change in light of the sharp turn that the Federal Circuit has taken with the decision below and, as a result, the United States could face adverse consequences from its international trade partners.

ARGUMENT

I. The Federal Circuit Unduly Deferred to Commerce, Allowing It to Circumvent the Commission's Authority

Respondent does not dispute that only the Commission has authority to determine material injury to a domestic industry under section 1673. Nor does it disagree that courts must independently review any question of law presented by a scope ruling. Instead, respondent attempts to avoid the question of what the Commission determined by pivoting to a different question: whether the product meets the physical characteristics described in the Thailand Order. Opp'n 26. Respondent argues that Commerce's answer to that question, "including Commerce's analysis of the k(1) materials," is subject to deferential review under the substantial evidence standard. *Ibid.* In essence, like the majority below, respondent conflates the question of scope with the more fundamental question of what the Commission determined in the first instance under section 1673.[1]

But those two questions do not perfectly overlap in all cases. See, *e.g.*, *Eckstrom Indus.* v. *United States*, 254 F.3d 1068, 1075 (Fed. Cir. 2001) (concluding that the Commission's "injury investigation did not encompass cast fittings," even though Commerce

[1] Contrary to respondent's suggestion, the Court of International Trade understood that compliance with section 1673's material injury requirement was a legal question that was embedded in its review of the k(1) materials. See, *e.g.*, App. 139-140a, 143a.

ruled that cast fittings were covered by an antidumping duty order's scope). Respondent concedes as much when it acknowledges that the Commission's final determination "presumptively applies to the entire 'class or kind of merchandise'" identified by Commerce, and that this presumption may prove to be wrong in some cases because the Commission may determine that the merchandise as defined by Commerce "encompasses more than a single domestic industry" in which case the Commission must conduct a "separate material injury analysis for each industry." Opp'n 19-20. Thus, to answer the threshold question of whether the scope and material injury questions completely align, a court must decide what the Commission determined in the first instance. And that is a question of law.

This Court has confirmed that interpreting the meaning of an agency's determination is a question of law. In *Merck Sharp & Dohme Corp.* v. *Albrecht*, a drug manufacturer claimed that several plaintiffs were preempted from asserting state-law "failure to warn" claims due to the Food and Drug Administration's repeated rejection of the manufacturer's attempts to warn customers of certain adverse effects on a drug's label. 587 U.S. 299, 308 (2019). The manufacturer argued that any additional attempt to display the adverse effects on the drug's label would have been futile because of the FDA's prior actions relieving it of the obligation to warn of these effects. *Id.* at 308-9. The district court granted summary judgment for the manufacturer, but the Third Circuit reversed, holding that the manufacturer

failed to show that the FDA's prior actions would have made it "highly probable that the FDA would not have approved" any additional attempt to change the drug's label. *Id*. at 309-10. The Third Circuit reasoned that this question was one for the factfinder, not a judge. *Id*. at 310.

This Court disagreed and held that interpreting the FDA's actions to determine whether they preempted state-law claims was a question of law, and that "judges . . . are better equipped to evaluate the nature and scope of an agency's determination." *Id*. at 316. It highlighted a judge's ability to understand and interpret agency decisions in light of the relevant statutory and regulatory context. *Ibid*. (citing 5 U.S.C. 706, specifying that a "reviewing court [] shall . . . determine the meaning or applicability of the terms of an agency action"). Even when "contested brute facts will prove relevant to a court's legal determination about the meaning and effect of an agency decision," this Court considered the factual analysis to be "subsumed within an already tightly circumscribed legal analysis." *Id*. at 317.

Like the majority below, respondent misapprehends the nature of the inquiry involved in ascertaining whether a scope ruling complies with section 1673's material injury requirement. When the inquiry is simply about product characteristics, the k(1) materials, which include the Commission's original determination, may supply factual matter that could help to answer that question. But when the inquiry is the more fundamental question of whether the scope ruling complies with section 1673's material

injury requirement (*e.g.*, whether the Commission's injury determination extends to merchandise that, according to the Commission itself, implicates a different domestic industry), ascertaining what the Commission meant is an exercise in legal interpretation. See *Merck Sharp*, 587 U.S. at 316-17.

Respondent's critique of Saha Thai's reliance on *Guerrero-Lasprilla* misses the mark. In that case, this Court held that "questions of law" include a question of whether settled facts can satisfy a legal standard. *Guererro-Lasprilla* v. *Barr*, 589 U.S. 221 (2020) (quoting 8 U.S.C. 1252(a)(2)(D)). The Court arrived at this conclusion by analyzing what "questions of law" are generally. This Court pointed to "facts alleged in a complaint" and whether they state a claim for relief, as well as the question of whether a "[g]overnment official's alleged conduct violated a clearly established law," as legal inquiries that involve whether a set of facts satisfies a legal standard. *Id.* at 227. Similarly, the inquiry into whether the Commission's determination (including any factual findings) meets the material injury requirement of section 1673 is a legal one. Pet. 19.

This Court's decision in *Wilkinson* v. *Garland* does not help respondent. While discussing mixed questions of law and fact, *Wilkinson* held that "a mixed question [that] requires a court to immerse itself in facts does not transform the question into one of fact," but instead "suggests a more deferential standard of review." 601 U.S. 209, 222 (2024). Respondent contends that the question before the Federal Circuit was a mixed question that "warranted

at least some deference." Opp'n 31. But interpreting the meaning of the Commission's determination does not require the court to immerse itself into the facts any more than would be necessary to interpret another agency's or court's decision. See *Merck Sharp*, 587 U.S. at 316. Thus, the legal analysis required to ascertain the meaning of the Commission's determination does not warrant any deference, much less deference to Commerce.[2]

Respondent's opposition does not assuage the concern that the majority's decision threatens to disrupt Congress' carefully designed division of powers between an executive agency (Commerce) and an independent agency (the Commission). See *Hosiden Corp.* v. *Advanced Display Mfrs. of Am.*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) ("[T]he division of responsibility between the Commission and Commerce is integral to the statutory scheme."). Allowing Commerce to hijack the Commission's material injury determination through its scope ruling authority undermines Congress' desire to

[2] Because the Commission is the sole agency with authority to determine material injury to a domestic industry, it is irrelevant that Commerce is the "administering authority" or that it has been regarded as the "master" of the antidumping laws. Opp'n 2, 31. Nothing in the statutory scheme suggests that Commerce has more expertise than the Commission to evaluate material injury. See *Algoma Steel Corp.* v. *United States*, 865 F.2d 240, 241 (Fed. Cir. 1989) ("In the intricate administrative machinery Congress has erected over the years for dumping and countervailing duty cases, one unique feature is the allocation of responsibility to two agencies otherwise independent of one another, the Commerce Department and the [Commission].").

insulate the imposition of antidumping duties from political headwinds. See *Humphrey's Ex'r*, 295 U.S. 602, 625. This Court should re-establish the clear division of powers that Congress allocated between an independent agency and an executive agency by allowing the Commission to speak for itself. See *Dak Ams. LLC* v. *United States*, 456 F. Supp. 3d 1340, 1347 (C.I.T. 2020) ("The International Trade Commission [] was created by the Revenue Act of 1916 as a nonpartisan, independent quasi-judicial government agency.").

II. Commerce's Ruling Violated Section 1673's Material Injury Requirement, Implicating the United States' International Trade Obligations

There is no dispute that Commerce lacks authority to impose antidumping duties on any merchandise unless the Commission has determined that a domestic industry is materially injured, or threatened with material injury, by dumped imports of "that merchandise." 28 U.S.C. § 1673. In making a material injury determination, the ultimate inquiry is the impact of the merchandise on the particular domestic industry for "like products," and the Commission considers multiple factors, including end use. *Hosiden*, 85 F.3d at 1563. Respondent concedes that the Commission's material injury determination only "generally" or "presumptively applies" to the class or kind of merchandise identified by Commerce in its less-than-fair-value investigation. Opp'n 16, 19. As respondent correctly acknowledges, the Commission may determine that the merchandise identified by

Commerce may be broken out into distinct subsets of merchandise that affect distinct domestic industries, and the Commission may conclude that one subset of merchandise causes material injury, while another does not. Opp'n 20-21.

Respondent further concedes that "[t]he resulting antidumping duty order would only cover the products for which the Commission found material injury." *Id.* at 20. That begs the question: what happens when Commerce misinterprets the scope of an antidumping duty order and, consequently, imposes antidumping duties on products for which the Commission did not make an affirmative material injury determination? That scope ruling would violate section 1673.

That is precisely what happened here. Respondent does not contest, nor could it, that line pipe conforms to more stringent specifications (API) than standard pipe, and that therefore line pipe has more demanding industrial end uses than standard pipe, notwithstanding their overlapping physical characteristics. There is also no dispute that domestic producers expressly withdrew *all* line pipe from the Commission's original material injury investigation for Thailand, including the only tariff codes under which dual-stenciled line pipe could be imported. See Opp'n 6. The Commission thus evaluated only the impact of importing mono-stenciled standard pipes on the domestic industry for mono-stenciled standard pipes. Consequently, the Commission could not have made an affirmative material injury determination for *any* line pipe from Thailand, whether mono- or dual-stenciled.

Respondent's attempt to argue otherwise is an exercise in deflection. Respondent emphasizes the shared physical characteristics of line and standard pipe, but that is not the entire analysis. Respondent has not pointed to any analysis of the other factors, such as end use, for any line pipe from Thailand. That analysis must be performed by the Commission. See Opp'n 3-4.

Tellingly, despite a lengthy discussion of the pipes' physical characteristics, respondent conveniently ignores, and even attempts to obscure, the crucial fact that that API specifications for line pipe are *more stringent* than the specifications for standard pipe, meaning that dual-stenciled line pipe has different end uses than mono-stenciled standard pipe, and therefore affects a different domestic industry. App. 60a; see also App. 139a ("In [the Venezuela] report, the [Commission] emphasized that imported standard and line pipe affect separate industries and are different products.").

To avoid this point, respondent argues that the Commission did not explicitly identify dual-stenciled line pipe from Thailand as a different "subset" of merchandise and did not identify a distinct domestic industry for it. Opp'n 20. According to respondent, that silence means that the Commission must have treated dual-stenciled line pipe and mono-stenciled standard pipe from Thailand as being part of a "single domestic standard pipe industry." Opp'n 21. That argument again assumes away the question by incorrectly treating mono-stenciled line pipe as a "subset" of standard pipe, which is not the case.

Because dual-stenciled line pipe meets both the basic specifications for standard pipe and the more stringent specifications for line pipe, the domestic industry for dual-stenciled line pipe is not necessarily subsumed into the domestic industry for mono-stenciled standard pipe. Without an express analysis of line pipe by the Commission, it is not obvious that dual-stenciled line pipe and mono-stenciled standard pipe have the same domestic industry. Again, in its investigations involving line pipe and standard pipe from other countries, the Commission consistently found two distinct industries for those products. App. 9-10a.

Respondent further attempts to conceal the significance of the distinct specifications by distorting Saha Thai's car analogy comparing standard pipe to a base model and line pipe to a luxury model that includes all the same basic features of the base model plus more. To suit its argument, respondent recharacterizes dual-stenciled line pipe as a "fully loaded *luxury* model" and mono-stenciled standard pipe as a "base model *luxury* car," and argues that both would be commonly referred to as "luxury cars." Opp'n 22 (emphasis added). This legerdemain logic reveals the flaw in respondent's position because it confirms that a luxury model would never be described by reference to a *non-luxury* base model. Likewise, here, after multiple rounds of briefing at various levels, respondent has failed to point to any authority suggesting that dual-stenciled line pipe is "commonly referred to in the industry" as "standard pipe." In short, Commerce lacked authority to impose

antidumping duties on dual-stenciled line pipe via a scope ruling under section 1673.

Contrary to respondent's suggestion, the majority's erroneous decision carries important international implications. Violating international trade obligations can have severe economic consequences. For example, when the United States violated its obligation to the European Union regarding subsidies for large civil aircraft, the WTO authorized the EU to impose sanctions of $3.99 billion per year.[3] Respondent ducks these concerns, arguing that the United States' international obligations may be disregarded in favor of inconsistent domestic legislation. The United States' international obligations cannot be so cavalierly ignored under the *Charming Betsy* canon, especially where, as here, there is no dispute that Congress implemented the Antidumping Agreement's material injury requirement in section 1673. Pet. 7-8, 30-31.

[3] Art. 22.6 DSU Arbitration Decision, *United States – Measures Affecting Trade In Large Civil Aircraft (Second Complaint), Recourse To Article 22.6 of the DSU by the United States*, WTO Doc. WT/DS353/ARB (Oct. 13, 2020), *available at* https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/353ARB.pdf&Open=True.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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