

UNITED STATES COURT OF INTERNATIONAL TRADE

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 :
 NEENAH FOUNDRY CO. et al.,
 :
 Plaintiffs,
 :
 v. Court No. 99-11-00716
 :
 UNITED STATES OF AMERICA and THE
 UNITED STATES INTERNATIONAL TRADE
 COMMISSION,
 :
 Defendants.
 - - - - - x

Memorandum & Order

[Plaintiffs' motion to stay this action denied.]

Dated: March 31, 2000

Collier, Shannon, Rill & Scott, PLLC (Paul C. Rosenthal and Robin H. Gilbert) for the plaintiffs.

Lyn M. Schlitt, General Counsel, James A. Toupin, Deputy General Counsel, and Charles A. St. Charles, Attorney-Advisor, for the defendant United States International Trade Commission.

AQUILINO, Judge: This action contests the "sunset review" determination of the International Trade Commission ("ITC") pursuant to 19 U.S.C. §1675(c)(1) (1995) that

revocation of the countervailing duty order on iron metal castings from India would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Iron Metal Castings From India; Heavy Iron Construction Castings From Brazil; and Iron Construction Castings From Brazil, Canada, and China, 64 Fed.Reg. 58,442 (Oct. 29, 1999). This decision

caused the International Trade Administration, U.S. Department of Commerce ("ITA") to publish its notice of Revocation of Countervailing Duty Order: Iron Metal Castings From India, 64 Fed.Reg. 61,602 (Nov. 12, 1999), whereupon the same plaintiffs as appear herein, and which had earlier commenced an action against the ITA, contesting its Amended Final Results of Expedited Sunset Review: Iron Metal Castings From India, 64 Fed.Reg. 37,509 (July 12, 1999), moved therein for a preliminary injunction, continuing suspension of liquidation of entries of such merchandise pending this court's resolution of their action(s).

That relief was denied sub nom. Neenah Foundry Co. v. United States, 24 CIT ___, ___ F.Supp.2d ___ (Jan. 20, 2000)¹, but this court did recognize concern on the part of the plaintiffs that judicial review and any necessary, resultant, further administrative proceedings could consume, in regular course, much time -- free of the long-standing countervailing-duty order², and the parties to both aforementioned actions were thus invited to present dispositive issues in an expeditious manner.

Notwithstanding this invitation, come now the plaintiffs with a Motion to Stay Proceedings herein, asserting that

the outcome of the related case, Court No. 99-07-00441, could have a significant impact on this case

¹ This opinion, familiarity with which is presumed, will be cited hereinafter as "Slip Op. 00-7".

² Certain Iron Metal Castings from India: Countervailing Duty Order, 45 Fed.Reg. 68,650 (Oct. 16, 1980).

. . . , [and] plaintiffs believe the interests of justice and judicial economy justify a stay of this proceeding until final resolution has been reached in the related case.

This motion is opposed by the defendant ITC, which represents in its papers that the intervenor-defendants join in this opposition. They summarize their position, in part, as follows:

[P]laintiffs have not shown that their separate challenge of the Commerce sunset results will cause exceptional circumstances warranting Commission reconsideration of its sunset determination. A stay of proceedings in this action pending judgment in Neenah . . . is inappropriate in the absence of a clear nexus between the issues in this action and the potential outcome of Court No. 99-07-00441.

Opposition of Defendant ITC, p. 6. Given the current, preliminary status of both actions, this court cannot disagree. See generally Slip Op. 00-07, pp. 13-17.

Of course, a long- and still-standing principle of Anglo-American jurisprudence is that a party plaintiff is the master of its complaint. See, e.g., City of Chicago v. Int'l College of Surgeons, 522 U.S. 156, 164 (1997); Caterpillar Inc. v. Williams, 482 U.S. 386, 398-99 (1987); Healy v. Sea Gull Specialty Co., 237 U.S. 479, 480 (1914); The Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25 (1912). It is equally well-established, however, that

the 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). See, e.g., American Life Ins. Co. v. Stewart, 300 U.S. 203, 215 (1937) ("In the exercise of a sound discretion[, a court] may hold one lawsuit in abeyance to abide the outcome of another, especially where the parties and the issues are the same"); Cherokee Nation of Okla. v. United States, 124 F.3d 1413, 1416 (Fed.Cir. 1997) ("When and how to stay proceedings is within the sound discretion of the trial court").

In exercising this discretion, a court "must weigh competing interests and maintain an even balance"³, taking into account those of the plaintiff, the defendant, non-parties or the public, and even itself. See, e.g., Hill v. Mitchell, 30 F.Supp. 2d 997, 1000 (S.D.Ohio 1998); Schwartz v. Upper Deck Co., 967 F.Supp. 405, 416 (S.D.Cal. 1997); Koulouris v. Builders Fence Co., 146 F.R.D. 193, 194 (W.D.Wash. 1991), citing Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, Inc., 87 F.R.D 53, 56 (E.D.Penn. 1980); McDonald v. Piedmont Aviation Inc., 625 F. Supp. 762, 767 (S.D.N.Y. 1986). However,

the suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else.

Landis v. North American Co., 299 U.S. at 255. In other words, a movant must "make a strong showing" that a stay is necessary and that "the disadvantageous effect on others would be clearly

³ Landis v. North American Co., 299 U.S. 248, 254-55 (1936).

outweighed." Commodity Futures Trading Comm'n v. Chilcott Portfolio Management, Inc., 713 F.2d 1477, 1484 (10th Cir. 1983).

Plaintiffs' request herein is primarily based upon the potential impact of the court's judgment in the related action against the ITA. Their thesis is that the issues raised in that appeal

go to the heart of Commerce's determination regarding the subsidy rates anticipated to exist if the order on Indian castings were to be revoked. . . . If plaintiffs prevail in their appeal of the Commerce determination, the rates recalculated on remand could be significantly higher

Because the Commission's negative determination was by a vote of four commissioners in the negative and two in the affirmative, a change in just one commissioner's decision from negative to affirmative could result in continuation of the CVD order. The record of the Commission's determination shows unquestionably that the commissioners who voted in the negative were influenced in their decisions by the low subsidy rates found by Commerce If plaintiffs prevail on one or more issues raised in the Commerce litigation, and Commerce increases the net countervailable subsidy rates on remand, it would be appropriate for the Commission voluntarily to take a remand or for the Court to order a remand to the Commission for its consideration of the change in this material evidence.

Plaintiffs' Motion to Stay Proceedings, pp 2-3. In assessing the competing interests, the plaintiffs claim that "a stay of this proceeding will have no adverse impact on any party", that "it would streamline significantly the issues in this appeal", and,

depending upon the results of the Commerce appeal, plaintiffs might not continue their appeal of the ITC determination, thus saving the parties from briefing the issues in this case altogether.

Id. at 8.

Whatever the virtue of this analysis, counsel for the Commission point out that the plaintiffs

have provided no basis to find it likely that, if Commerce were to complete a remand determination, the revised results would be of an "exceptional" nature, justifying the Commission's reexamination of its earlier determination . . . [or] for their claim that . . . the margins found by Commerce could increase substantially.

Opposition of Defendant ITC, pp. 4, 5. Furthermore, the "[p]laintiffs acknowledge . . . that their second claim, concerning . . . application of the cumulation provision, 'could be considered prior to any determination of the Commerce appeal'". Id. at 5, quoting Plaintiffs' Motion to Stay Proceedings, p. 7.

While the defendant does not argue that ITC interests would be seriously compromised by a stay, some harm is inherent in any denial of the right to proceed. See, e.g., Landis v. North American Co., 299 U.S. at 255 ("Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both"); Klein v. Adams & Peck, 436 F.2d 337, 339 (2d Cir. 1971) ("The right to proceed in court should not be denied except under the most extreme circumstances"). The question therefore is whether the plaintiffs are faced with such circumstances.

Clearly, they are not. Hence, their motion to stay this action must be, and it hereby is, denied. And the parties

are thus hereby reminded of their commitment in the Joint Status Report filed herein pursuant to CIT Rule 56.2(a) to propose a briefing schedule within ten days of this adverse decision.

So ordered.

Dated: New York, New York
March 31, 2000

Judge