



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DECISION AND REASONS

Public Interest Inquiry
No. PB-2006-001

Copper Pipe Fittings

*Decision issued
Monday, May 14, 2007*

*Reasons issued
Tuesday, May 29, 2007*

TABLE OF CONTENTS

DECISION.....i
STATEMENT OF REASONS1
 BACKGROUND.....1
 PUBLIC INTEREST CONSIDERATIONS.....2

IN THE MATTER OF representations as to whether there are reasonable grounds to consider that the imposition, in whole or in part, of an anti-dumping duty on imports of copper pipe fittings originating in or exported from the United States of America, the Republic of Korea and the People's Republic of China and of a countervailing duty on imports of copper pipe fittings originating in or exported from the People's Republic of China, as a result of the Canadian International Trade Tribunal's findings dated February 19, 2007, in Inquiry No. NQ-2006-002 conducted under section 42 of the *Special Import Measures Act*, would not or might not be in the public interest under section 45 of the *Special Import Measures Act*.

DECISION

Pursuant to section 45 of the *Special Import Measures Act*, the Canadian International Trade Tribunal is of the opinion that there are no reasonable grounds to consider that the imposition of an anti-dumping or countervailing duty, or the imposition of such a duty in the full amount provided for by the *Special Import Measures Act*, in respect of the goods referred to in the Canadian International Trade Tribunal's findings in Inquiry No. NQ-2006-002 would not or might not be in the public interest. Accordingly, the Canadian International Trade Tribunal will not initiate a public interest inquiry into this matter.

Serge Fréchette
Serge Fréchette
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Ellen Fry
Ellen Fry
Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On February 19, 2007, in Inquiry No. NQ-2006-002, the Canadian International Trade Tribunal (the Tribunal) found, pursuant to subsection 43(1) of the *Special Import Measures Act*,¹ that the dumping of copper pipe fittings originating in or exported from the Republic of Korea (South Korea) and the People's Republic of China (China) and the subsidizing of copper pipe fittings originating in or exported from China had caused injury to the domestic industry.
2. In the same inquiry, pursuant to subsections 43(1) and (1.01) of *SIMA*, the Tribunal found that the dumping of copper pipe fittings originating in or exported from the United States of America had caused injury to the domestic industry.
3. The Tribunal excluded the following copper pipe fittings from its injury findings: 4 cast drainage lead 8 oz. closet flanges and 4 cast drainage 14 oz. lead closet flanges.
4. Subsection 45(1) of *SIMA* provides that the Tribunal shall, on its own initiative or on the request of an interested person, initiate a public interest inquiry if the Tribunal is of the opinion that there are reasonable grounds to consider that the imposition of an anti-dumping duty or countervailing duty, or the imposition of such a duty in the full amount, would not or might not be in the public interest.
5. As part of its injury decision notification process, on February 19, 2007, the Tribunal issued a letter which indicated that interested persons who were of the view that the imposition of an anti-dumping or countervailing duty in the full amount would not or might not be in the public interest could, if they so wished, make a request to the Tribunal to initiate a public interest inquiry. The Tribunal further indicated that interested persons had to file their representations with the Tribunal not later than April 5, 2007.
6. In this regard, on March 27, 2007, D.A. Fehr, Inc. (Fehr), a U.S. exporter of copper pipe fittings to Canada, filed a request with the Tribunal for the initiation of a public interest inquiry.
7. On April 11, 2007, the Tribunal notified all those who received a copy of its injury findings in Inquiry No. NQ-2006-002 that it had received a properly documented request for a public interest inquiry. The Tribunal also indicated that, if interested persons wished to submit reply submissions to the Tribunal, they had to be filed not later than May 2, 2007, and that the submissions should address the facts and arguments contained in Fehr's request and provide any other information that would assist the Tribunal in forming an opinion about whether there were reasonable grounds to consider the initiation of a public interest inquiry.
8. On May 2, 2007, the Tribunal received four submissions opposing the initiation of a public interest inquiry: a joint submission from Cello Products Inc. (Cello) and Bow Plumbing Group (Bow), the two domestic producers of copper pipe fittings, and individual submissions from C-B Supplies Ltd. (C-B Supplies), Mueller Industries, Inc. (Mueller) and NCI Marketing Inc. (NCI), importers and/or exporters of the subject goods.
9. The Tribunal notes that there were no submissions from any downstream interests and that no other exporters, importers or users of copper pipe fittings provided a submission to the Tribunal in support of a public interest inquiry.

1. R.S.C. 1985, c. S-15 [*SIMA*].

PUBLIC INTEREST CONSIDERATIONS

10. For the Tribunal to initiate a public interest inquiry pursuant to section 45 of *SIMA*, the Tribunal must be of the opinion that there are reasonable grounds to consider that the imposition of an anti-dumping duty or countervailing duty, or the imposition of such a duty in the full amount, would not or might not be in the public interest.

11. In this respect, the Tribunal has considered the relevant factors prescribed in paragraph 40.1(2)(d) of the *Special Import Measures Regulations*,² which shall be addressed in a request for a public interest inquiry, where applicable. These factors include the availability of goods of the same description from countries or exporters to which the order or finding does not apply; the effect that the imposition of the duty has had or is likely to have on competition in the domestic market; the effect on producers in Canada that use the goods as inputs in the production of other goods and in the provision of services; the effect on competition by limiting access to goods that are used as inputs in the production of other goods and in the provision of services, or by limiting access to technology; the effect on the choice or availability of goods at competitive prices for consumers; and the effect that the non-imposition of the duty, in whole or in part, is likely to have on domestic producers of inputs used in the production of like goods. Paragraph 40.1(3)(b) prescribes similar factors to be considered in a public interest inquiry.

12. In support of a public interest inquiry, Fehr argued that it is not in the public interest to impose an anti-dumping duty of 242.0 percent on its exports of copper pipe fittings to Canada, given that identical goods can be imported into Canada at a duty rate of 1.9 percent, and that similar goods are available from three companies with zero margins of dumping or zero amounts of subsidy. Fehr submitted that the imposition of an anti-dumping duty in the full amount would lessen the Canadian housing and construction industry's access to copper pipe fittings on a just-in-time delivery basis and would limit their ability to purchase in smaller volumes. Fehr argued that, given the significantly lower margins of dumping or amounts of subsidy of other foreign suppliers, a reduction or elimination of duties faced by Fehr would not have a negative impact on the domestic industry.

13. Parties opposed argued that Fehr failed to establish any justification that would allow the Tribunal to conduct a public interest inquiry. In their view, Fehr presented no evidence that the imposition of an anti-dumping duty and countervailing duty has compromised the competitiveness in the domestic market. Parties opposed noted that Fehr's own submissions demonstrate that the low or zero dumping margins and amounts of subsidy found for other exporters will ensure the continuation of supply and competition in the domestic market for copper pipe fittings. Furthermore, parties opposed suggested that the arguments submitted by Fehr are private, commercial interests, which are the inevitable consequence of the application of duties under the *SIMA* regime, rather than of a broader public interest as contemplated by section 45 of *SIMA*.

14. With regard to the relevant factors prescribed in the *Regulations*, the Tribunal has carefully reviewed all the submissions received, as well as the information on the record of Inquiry No. NQ-2006-002 under section 42 of *SIMA*, in order to assess whether, in its opinion, there are reasonable grounds to consider that the imposition of an anti-dumping or countervailing duty, or the imposition of such a duty in the full amount, would not or might not be in the public interest.

2. S.O.R./84-927 [*Regulations*].

15. The Tribunal first examined whether there are reasonable grounds to consider that goods of the same description are not readily available from countries or exporters to which the findings do not apply. In this regard, the evidence on the record of Inquiry No. NQ-2006-002 indicates that only a minimal volume of copper pipe fittings were imported from non-subject countries. Given this fact, the Tribunal then considered imports of the subject goods and examined the average margins of dumping and amounts of subsidy. The Tribunal observed that the subject goods are available from a number of suppliers in the Canadian market with zero or relatively minimal margins of dumping and/or amounts of subsidy. Specifically, certain exporters in the United States and China were found not to have been dumping, and the exports of copper pipe fittings from certain exporters in China were found not to have been subsidized. In addition, the major South Korean exporter of the subject goods to Canada, Jungwoo Metal Industry Co., Ltd. (Jungwoo), was found to have a margin of dumping of only 1.9 percent. During the CBSA's period of investigation, the volume of shipments to Canada by these exporters represented close to half of both apparent total imports and the apparent domestic market.³ Furthermore, as noted in the submissions of parties opposed, there are a number of other exporters of the subject goods in the United States, China and South Korea which have margins of dumping significantly lower than that of Fehr.

16. Second, the Tribunal examined whether there are reasonable grounds to consider that the imposition of an anti-dumping or countervailing duty in the full amount has eliminated or substantially lessened competition in the domestic market for copper pipe fittings and whether the duties have caused or are likely to cause significant damage to producers in Canada that use the goods as inputs in the production of other goods and in the provision of services. In its request, Fehr stated that the imposition of an anti-dumping duty will significantly impair competitiveness in the Canadian marketplace by limiting the availability of copper pipe fittings in small volumes and with just-in-time delivery. In response, parties opposed to the initiation of a public interest inquiry noted that there are at least three distributors with coast-to-coast operations that supply copper pipe fittings produced by the same foreign manufacturer that supplies Fehr, Jungwoo of South Korea. This is in addition to the non-dumped and non-subsidized goods from the United States and China offered by other exporters/importers.

17. The Tribunal is of the view that there are ample sources of copper pipe fittings available in the domestic market for the following reasons: (1) a significant volume of subject goods was found not to be dumped or subsidized; (2) the margins of dumping for a number of other suppliers are significantly lower than that of Fehr; and (3) there remain several suppliers of copper pipe fittings that compete in the Canadian market. In coming to this view, the Tribunal considered the effect that the imposition of the duty has had or is likely to have on competition in the domestic market and the effect that it has had on producers in Canada that use the subject goods as inputs in the production of other goods.

18. Accordingly, the Tribunal agrees with the submissions made by parties opposed to the initiation of a public interest inquiry that there are no reasonable grounds to consider that copper pipe fittings are not readily accessible by Canadian purchasers and downstream users. As discussed above, in addition to the two domestic producers of copper pipe fittings, there are many importer/distributors of the subject goods in Canada.

3. Tribunal Exhibit NQ-2006-002-33B (protected), Administrative Record, Vol. 2.1 at 196.103, 196.109; Tribunal Exhibit NQ-2006-002-05A (protected), Administrative Record, Vol. 2 at 88-91.

19. Given the above, the Tribunal is of the opinion that there are no reasonable grounds to consider that the imposition of an anti-dumping duty and countervailing duty has eliminated or substantially lessened competition in the domestic market. In addition, there are no reasonable grounds to consider that the duties have caused or are likely to cause significant damage to producers in Canada that use the goods as inputs in the production of other goods and in the provision of services.

20. For the above reasons, the Tribunal is of the opinion that there are no reasonable grounds to consider that the imposition of an anti-dumping or countervailing duty, or the imposition of such a duty in the full amount, in respect of the subject goods would not or might not be in the public interest. Accordingly, the Tribunal will not initiate a public interest inquiry into this matter.

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