



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Preliminary Injury Inquiry
No. PI-2013-002

Circular Copper Tube

*Order and reasons issued
Wednesday, July 3, 2013*

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IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 cm to 10.795 cm), excluding industrial and coated or insulated copper tube (the subject goods), originating in or exported from the Federative Republic of Brazil, the Hellenic Republic, the People's Republic of China (China), the Republic of Korea and the United Mexican States;

AND IN THE MATTER OF a notice of motion filed on behalf of Paranapanema S.A. on June 24, 2013, under subrule 24(1) of the *Canadian International Trade Tribunal Rules*, for an order disqualifying Ms. Victoria Bazan from acting as counsel of record for Great Lakes Copper Inc.

ORDER

The Canadian International Trade Tribunal hereby dismisses the motion.

Jason W. Downey

Jason W. Downey
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Pasquale Michaele Saroli

Pasquale Michaele Saroli
Member

Dominique Laporte

Dominique Laporte
Secretary

STATEMENT OF REASONS

BACKGROUND

1. On June 24, 2013, Paranapanema S.A. (Paranapanema) filed a one-page, three-paragraph submission in opposition to a finding of reasonable indication of injury, threat of injury or retardation in this proceeding. Two paragraphs of that submission concerned that subject. A third concerned an allegation of conflict of interest, as follows:

Before proceeding, we must raise a very important issue with the Tribunal. In 2007, a company that is part of the Paranapanema group of companies (Caraiba Metais S.A.) participated in the antidumping and countervailing duty case against copper rods from Brazil (NQ-2006-003). In the Tribunal proceedings and in the CBSA investigation, Caraiiba Metais S.A. was represented by Ms. Victoria Bazan. Ms. Bazan is now acting for Great Lakes in PI-2013-002 and this should be considered to be a conflict of interest. It was known at that time that Caraiiba Metais S.A. was affiliated with Paranapanema S.A. To the extent that arguments are made about threat of injury by our company, we submit that there is a legal conflict and she should not be acting against us. . . . Ms. Bazan knows information about our company and the market in Brazil that should not be used against us in a Canadian legal proceeding. This information was received in connection with her representation of us in 2007. We are still a major copper refiner and copper products manufacturer in Brazil and any allegations against Brazil are an allegation against us.

2. On June 24, 2013, the Tribunal wrote Ms. Bazan requesting comments on Paranapanema's allegation. On June 25, 2013, Mr. Michael Burgar wrote the Tribunal informing it that he had been retained by Ms. Bazan as counsel in relation to this allegation. He acknowledged that Ms. Bazan had acted for Caraiiba Metais S.A. (Caraiiba) in *Copper Rod*¹ and that it was a company under the Paranapanema umbrella of companies. He submitted, however, that *Copper Rod* is a wholly unrelated matter to the present inquiry, which concerns another Paranapanema-affiliated company and a different product; that Ms. Bazan did not obtain confidential information from Paranapanema in relation to *Copper Rod*; that there is "no reason for any party or person to have a concern or apprehension that Ms. Bazan came to acquire confidential information in 2007 that might in some way now have a bearing on [the present inquiry]"; that Great Lakes Copper Inc. (Great Lakes) should not be deprived of its choice of counsel lightly at this stage of this proceeding; that Paranapanema has not disclosed sufficient evidence or information to warrant a disqualification order; or, in the alternative, that Paranapanema should be required to proceed by way of a motion under section 24 of the *Canadian International Trade Tribunal Rules*.²

3. On June 25, 2013, the Tribunal wrote Paranapanema asking it to confirm whether it was Paranapanema's intention to have the Tribunal consider the allegation of conflict of interest contained in its submission of June 24, 2013, as a motion for disqualification under section 24 of the *CITT Rules*. On June 26, 2013, Paranapanema confirmed that it did, and Ms. Bazan was asked by the Tribunal to respond accordingly.

4. On June 27, 2013, Mr. Burgar wrote the Tribunal to submit that Ms. Bazan maintained that Paranapanema has not disclosed sufficient evidence or information to justify a disqualification order and that Paranapanema bears the evidentiary onus of proving that her retainers in *Copper Rod* and the present inquiry are sufficiently related to warrant a conclusion that confidential information relevant to both retainers had been imparted during the course of her involvement in *Copper Rod*. Mr. Burgar submitted that there was no evidence before the Tribunal, in the legal sense, that Ms. Bazan may have received relevant

1. (12 April 2007) NQ-2006-003 (CITT).

2. S.O.R./91-499 [*CITT Rules*].

confidential information, but only bald allegations. He maintained that “this proposed motion relate[s] to two separate retainers Ms. Bazan had for two different companies, in relation to two different products” and that “[h]er work for [Caraiba] was concluded 6 years ago.”

5. On June 27, 2013, Paranapanema was afforded the opportunity to respond to Ms. Bazan’s submissions by noon on June 28, 2013. On June 27, 2013, Paranapanema requested an extension of time (until July 2, 2013) to file its reply. The Tribunal denied that request that same day on the basis (a) that the Tribunal and parties to this proceeding are under tight statutory time frames and that the requested extension could be prejudicial to its proper conduct, and (b) that the reply sought of Paranapanema was in relation to the brief representations made by counsel to Ms. Bazan.

6. On June 28, 2013, Paranapanema filed a reply to Ms. Bazan’s submissions of June 27, 2013. In addition to essentially repeating its submissions of June 24, 2013, Paranapanema added that Ms. Bazan “had a long interconnect with Paranapanema with access to relevant information such as business processes and accounting systems”, without, however, providing further detail of what these were. Paranapanema added that what it is advancing “is difficult to prove in 2013”, that it was owed a duty of loyalty and that the “Tribunal had not given Paranapanema time to become experts in Canadian law on this issue.” In addition, and in purported support of its allegations, Paranapanema filed an invoice for professional services rendered, which was addressed to Caraiba from Ms. Bazan.

7. On June 28, 2013, Mr. Burgar made further written submissions to the Tribunal, which the Tribunal accepted, having regard to the fact that Paranapanema’s correspondence of June 28, 2013, contained argument and evidence not previously raised. Mr. Burgar submitted that the invoice provided by Paranapanema concerned an unrelated matter, that Ms. Bazan is not now acting against Caraiba, that that company does not manufacture copper tube and that she has never acted for Eluma S.A. Industria e Comercio (the Paranapanema affiliate that allegedly manufactures copper tube).

ANALYSIS

8. In *MacDonald Estate v. Martin*³ the Supreme Court of Canada indicated that the first step in establishing a disqualifying conflict of interest is to determine whether “the lawyer receive[d] confidential information attributable to a solicitor and client relationship relevant to the matter at hand.”⁴ Mr. Burgar correctly relied upon *Chapters Inc. v. Davies, Ward & Beck LLP*⁵ as authority in support of the proposition that Paranapanema bears the onus of establishing the factual basis for such a determination.⁶ More to the point, the Court in *MacDonald Estate* underscored the need for the alleging party to demonstrate the existence of a previous solicitor-client relationship which is *sufficiently related* to the retainer from which it is sought to remove the solicitor.

9. In this regard, the Tribunal finds that Paranapanema has provided insufficient evidence to warrant the disqualification of Ms. Bazan in this matter. Rather, the Tribunal is of the view that Paranapanema’s allegations amount to little more than bald and largely unsubstantiated assertions that, in other circumstances, could have been summarily dismissed had it not been for the serious question to which they pertain.

3. [1990] 3 S.C.R. 1235 [*MacDonald Estate*].

4. *MacDonald Estate* at para. 45.

5. 2001 CanLII 24189 (ON CA) at paras. 29-30.

6. The Tribunal rejects the implication in Paranapanema submissions that it was incumbent upon the Tribunal to help establish elements of its claim.

10. Nor does the Tribunal accept Paranapanema's assertion that the Tribunal did not afford it sufficient opportunity or time to present its concerns. In fact, the Tribunal notes that Paranapanema became aware that Ms. Bazan was representing Great Lakes by no later than June 7, 2013,⁷ when it was provided with the list of participants to this proceeding. Paranapanema did not raise a concern with respect to Ms. Bazan's representation of Great Lakes until June 24, 2013. Paranapanema therefore had more than two weeks to gather evidence to support a claim, as well as to seek Canadian legal counsel.

11. In any event, the Tribunal does not view *Copper Rod* as being a matter related to the present inquiry because each of these matters concerns different products with different end uses and channels of distribution. The fact that both products are made of copper is not sufficient to establish a sufficient relationship between the two proceedings.

12. As such, and in the absence of clear and compelling evidence, the Tribunal is unable to reasonably conclude that Ms. Bazan may have received confidential information in the course of her retainer in *Copper Rod* that might be of relevance in the present proceeding. In this regard, the mere allusion to her having acquired knowledge of "business processes and accounting systems", of unspecified relevance to the current proceeding, during the course of *Copper Rod*, is not, in the Tribunal's view, sufficient to even establish a reasonable perception of a conflict of interest on the part of Ms. Bazan.

13. Furthermore, because Caraiba is not itself a party to the present proceeding, a clear nexus between Ms. Bazan's duty of loyalty towards Caraiba and any application, or extension, of that duty to Paranapanema would have had to be clearly demonstrated. This was not done.⁸

14. Ms. Bazan has been counsel of choice⁹ to Great Lakes since the inception of the case before the CBSA and should be allowed to continue to act as such in proceedings before the Tribunal relative to the matter.

DECISION

15. The Tribunal hereby dismisses the motion.

Jason W. Downey
Jason W. Downey
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

7. Possibly earlier, by way of the public notification of the proceedings at the Canada Border Services Agency.

8. By way of aside, the Supreme Court of Canada, in *R. v. Neil*, 2002 SCC 70 [*Neil*], explicitly acknowledged the need to balance the importance of a lawyer's duty of loyalty to a client against the realities of the legal system, noting that an unnecessary expansion of that duty may be inimical to the proper functioning of the legal system.

9. Access to counsel of one's choosing is a competing value recognized by the Supreme Court of Canada in *MacDonald Estate, Neil and Strother v. 3464920 Canada Inc.*, 2007 SCC 24.