



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim Review No. RD-2009-002

Copper Pipe Fittings

*Order and reasons issued
Friday, February 5, 2010*

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IN THE MATTER OF an interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on February 19, 2007, in Inquiry No. NQ-2006-002, concerning:

THE DUMPING 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 THE SUBSIDIZING OF COPPER PIPE FITTINGS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

ORDER

On November 13, 2009, Lee Brass filed a request for an interim review of the findings made by the Canadian International Trade Tribunal in Inquiry No. NQ-2006-002 concerning the dumping of solder joint pressure pipe fittings and solder joint drainage, waste and vent pipe fittings, made of cast copper alloy, wrought copper alloy or wrought copper, for use in heating, plumbing, air conditioning and refrigeration applications, restricted to the products enumerated in the appendix to these findings (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 the subsidizing of copper pipe fittings originating in or exported from the People's Republic of China.

Pursuant to subsections 76.01(3) and (4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal has decided not to conduct an interim review of the above findings.

Pasquale Michaele Saroli

Pasquale Michaele Saroli
Presiding Member

Stephen A. Leach

Stephen A. Leach
Member

Jason W. Downey

Jason W. Downey
Member

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Dominique Laporte
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STATEMENT OF REASONS

BACKGROUND

1. On November 13, 2009, pursuant to subsection 76.01 of the *Special Import Measures Act*,¹ the Canadian International Trade Tribunal (the Tribunal) received a request from Lee Brass, an American exporter of copper pipe fittings, for an interim review of the Tribunal's findings made on February 19, 2007, in Inquiry No. NQ-2006-002, in respect of solder joint pressure pipe fittings and solder joint drainage, waste and vent pipe fittings, made of cast copper alloy, wrought copper alloy or wrought copper, for use in heating, plumbing, air conditioning and refrigeration applications, restricted to the products enumerated in the appendix to the findings (copper pipe fittings), originating in or exported from the United States of America (United States), 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.

2. On February 19, 2007, pursuant to subsections 43(1) and (1.01) of *SIMA*, the Tribunal determined that:

- the dumping of copper pipe fittings originating in or exported from the United States, South Korea and China and the subsidizing of copper pipe fittings originating in or exported from China had caused injury to the domestic industry; and
- the dumping of copper pipe fittings originating in or exported from the United States had caused injury to the domestic industry.

The following copper pipe fittings were excluded from its injury findings: (a) "4 cast drainage lead 8 oz. closet flange" and (b) "4 cast drainage 14 oz. lead closet flange".

3. On November 26, 2009, the Tribunal determined that the request was properly documented in the manner prescribed by subrule 70(1) of the *Canadian International Trade Tribunal Rules*.² In addition, pursuant to subrule 70(2), the Tribunal informed all parties to Inquiry No. NQ-2006-002 and Public Interest Inquiry No. PB-2006-001 of its receipt of the request and gave them an opportunity to make representations concerning the request by December 14, 2009.

4. On December 14, 2009, NCI Marketing Inc. (NCI) and BMI Canada Inc. (BMI), both importers of copper pipe fittings, filed submissions supporting the request. On the same date, Cello Products Inc. (Cello) and Bow Plumbing Group (Bow), two domestic producers of copper pipe fittings, filed submissions opposing the request.

SUBMISSIONS OF THE PARTIES

5. In its request, Lee Brass submitted that circumstances in Canadian production had changed since the findings were made in 2007. According to Lee Brass, Cello, the only producer in Canada of cast copper pipe fittings at the time of the findings, had ceased production of these goods and, therefore, no longer required the protection of the findings. Specifically, Lee Brass was seeking exclusions from the findings for certain cast copper pipe fittings.

6. NCI and BMI noted that Lee Brass's request did not include all cast copper pipe fittings covered by the findings and submitted that, in the absence of production in Canada of all cast copper pipe fittings, there could be no valid basis for maintaining the findings against any cast copper pipe fittings.

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

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

7. Cello and Bow submitted that Lee Brass failed to substantiate its claim that Cello had ceased production of cast copper pipe fittings. In this regard, Cello indicated that, although it imports cast copper pipe fittings, it still produces cast copper pipe fittings, and provided evidence of such production.³ Cello noted that it had temporarily idled its foundry as of March 31, 2009, as a result of increasing competition from low-priced imports but had operated its foundry on occasion since then.⁴ It submitted that it intends to continue to operate its foundry as needed to meet market demand, and has no plans to sell it.⁵ Cello further submitted that cast items are available from other domestic production in Canada.⁶

8. On December 23, 2009, Lee Brass filed a reply brief taking exception to Cello's submission that it had closed its plant temporarily. In particular, Lee Brass questioned whether Cello was a domestic manufacturer with limited operations that warranted full protection or, based on Cello's submission, was actually an importer of cast copper pipe fittings.

ANALYSIS

Legal Framework

9. Pursuant to subsections 76.01(1) and (3) of *SIMA*, the Tribunal may conduct an interim review of a finding in whole or in part if a requester satisfies the Tribunal that the review is warranted. The onus is therefore on the requester to establish that an interim review is warranted.

10. In assessing whether the requester has discharged this onus, the Tribunal takes into account rule 72 of the *Rules*, which provides as follows:

In order to decide whether an interim review under section 76.01 of the *Special Import Measures Act* is warranted, the Tribunal may request the parties to provide information concerning

- (a) whether changed circumstances or new facts have arisen since the making of the order or finding;
- (b) facts that were not put in evidence in the original proceedings and that were not discoverable by the exercise of reasonable diligence; and
- (c) any other matter that is relevant to the review.

11. Similarly, the Tribunal's *Guideline on Interim Reviews* indicates the following:

An interim review may be warranted where there is a reasonable indication that sufficient new facts have arisen or that there has been a sufficient change in the circumstances that led to the order or finding. . . . An interim review may also be warranted where there are sufficient facts that, although in existence, were not put into evidence during the previous review or inquiry and were not discoverable by the exercise of reasonable diligence at that time.

12. The Tribunal has consistently held that an interim review will only be undertaken when it is satisfied that there are sufficiently compelling reasons to do so. New facts or changes in circumstances are not, in and of themselves, enough to warrant an interim review. The question is whether there are sufficient new facts or changes in the circumstances to warrant an interim review, or whether there are sufficient facts, which although in existence at the time of the injury inquiry, were not put in evidence in the original proceedings because they were not discoverable by the exercise of reasonable diligence.⁷

3. *Protected Statement of Jason Aurini*, 14 December 2009, at 4.

4. *Ibid.*, para. 5.

5. *Public Statement of Jason Aurini*, 14 December 2009, at 3.

6. *Protected Statement of Jason Aurini*, 14 December 2009, at 3.

7. See *Waterproof Footwear and Bottoms of Plastic or Rubber* (10 October 2002), RD-2002-001 (CITT) at 2; *Leather Footwear with Metal Toe Caps* (25 November 2005), RD-2005-001 (CITT), paras. 8-9; *Concrete Reinforcing Bar* (9 November 2005), RD-2005-002 (CITT), paras. 9-10.

13. The Tribunal has further stated the following in respect of the requirements for the initiation of an interim review:

In the Tribunal's opinion, the information on file in respect of a request must indicate a likelihood that an amendment to the order or finding would occur if an interim review were conducted. To initiate interim reviews on a lesser threshold would create an unacceptable level of uncertainty in the duration and durability of a finding or order and would be costly for the parties involved. Proceedings under SIMA are often complex and burdensome, and it would not be reasonable to permit the reopening of a case, or part of one, on a lesser standard.⁸

14. The same holds true for a request seeking the rescission of an order or finding in its entirety, which must indicate a likelihood that such rescission would occur.

15. In other words, the mere existence of new facts, changed circumstances, or pre-existing facts that were not discoverable by the exercise of reasonable diligence does not necessarily warrant an interim review. In this regard, such facts or changed circumstances must indicate that an interim review would likely result in the order or finding at issue being amended or rescinded.

State of Domestic Production

16. While Lee Brass, BMI and NCI have asserted that the domestic production of cast copper pipe fittings has ceased, they have provided little or no evidence to substantiate this assertion.

17. Mr. Jason Aurini, Vice-president of Cello, provided the Tribunal with a statement, which has not been contradicted by Lee Brass, BMI or NCI, assuring the Tribunal that Cello has not abandoned its production of cast copper pipe fittings and that, while Cello idled its foundry in March 2009, it has intentionally cast surplus inventory of copper pipe fittings, which it retains for later machining and finishing as required. Mr. Aurini submitted that Cello continues to employ its foundry workers and can have its foundry fully operational in less than two hours. In fact, Mr. Aurini also submitted that Cello has produced limited quantities of cast copper fittings each month since March 2009 as demand required. Moreover, Cello indicated that it has no plans to sell its foundry equipment and intends to continue producing cast copper pipe fittings as needed.⁹

18. The Tribunal has previously held that the temporary idling of production is not tantamount to the cessation of domestic production. In *Hot-Rolled Carbon Steel Plate*¹⁰ the Tribunal considered the case of a major domestic producer that had announced it would idle its production facility. An importer requested an interim review, asserting that thick steel plate would no longer be produced in Canada. The domestic producer in question replied that it had not irrevocably ceased its production of plate but intended to resume operations when economic conditions justified such production. In addition, another domestic producer submitted evidence that it had produced some thick plate for a customer and planned to produce again. In determining that the order should not be amended to exclude thick plate, the Tribunal reasoned that there was insufficient evidence to establish the absence of recent or imminent production of thick plate in Canada.

19. Applying the same rationale in the present proceedings, the Tribunal is not satisfied that the domestic production of cast copper pipe fittings has ceased permanently.

8. See *Machine Tufted Carpeting* (21 August 2000), RD-2000-001 (CITT) at 3.

9. *Public Statement of Jason Aurini*, 14 December 2009, at 3.

10. (28 November 2003), RD-2002-006 (CITT).

Single Class of Goods

20. The Tribunal is mindful of its determination in Inquiry No. NQ-2006-002 that cast copper pipe fittings and wrought copper pipe fittings are substitutable and compete with each other and, therefore, constitute a single class of goods. No evidence has been adduced in the present proceedings to indicate that these circumstances have sufficiently changed, nor have new facts been adduced to alter the Tribunal's conclusion in this regard.

21. Furthermore, there is no evidence that domestic production of wrought copper pipe fittings has ceased or been idled. On the contrary, Mr. Aurini's uncontested statement was that Cello continues to produce wrought copper pipe fittings. While Cello imports certain cast copper pipe fittings, it is a domestic producer of the copper pipe fittings for the purposes of the Tribunal's findings.¹¹ In addition, no party suggested that Bow had ceased or idled its production of wrought copper pipe fittings.

22. As a result, even if domestic production of cast copper pipe fittings had permanently ceased, there would remain on-going domestic production of like goods. Amending the Tribunal's findings to exclude cast copper pipe fittings would likely lead to the resumption or continuation of dumping of cast copper pipe fittings resulting in injury to the domestic production of wrought copper pipe fittings. Such a result would undermine the remedial effect of the Tribunal's findings and would not accord with the object and purpose of *SIMA*.

DECISION

23. For the foregoing reasons, the Tribunal is not satisfied that an interim review is warranted and, therefore, pursuant to subsections 76.01(3) and (4) of *SIMA*, the Tribunal has decided not to conduct an interim review of its findings.

Pasquale Michaele Saroli
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11. The definition of "domestic industry" in subsection 2(1) of *SIMA* gives the Tribunal discretion to treat domestic producers of like goods as if there were not domestic producers, if they import the dumped or subsidized goods. In Inquiry No. NQ-2006-002, the Tribunal determined that Cello ought to be treated as a domestic producer despite its importations of copper pipe fittings.