



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim Review No. RD-2006-006

Carbon Steel Pipe Nipples,
Threaded Couplings and Adaptor
Fittings

*Order issued
Thursday, May 3, 2007*

*Reasons issued
Friday, May 18, 2007*

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IN THE MATTER OF a request for an interim review, under subsection 76.01(1) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on July 16, 2003, in Inquiry No. NQ-2002-004, concerning:

**THE DUMPING OF CERTAIN CARBON STEEL PIPE NIPPLES, THREADED
COUPLINGS AND ADAPTOR FITTINGS, IN NOMINAL DIAMETERS UP TO
AND INCLUDING 6 INCHES OR THE METRIC EQUIVALENTS,
ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF
CHINA**

ORDER

On December 28, 2006, NCI Marketing Inc. filed a request for an interim review for the rescission of the above finding as it relates to pipe nipples and threaded couplings.

Pursuant to subsection 76.01(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal has decided not to conduct an interim review of the above finding as it relates to pipe nipples.

Meriel V. M. Bradford

Meriel V. M. Bradford
Presiding Member

Zdenek Kvarda

Zdenek Kvarda
Member

James A. Ogilvy

James A. Ogilvy
Member

Hélène Nadeau

Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

Tribunal Members:	Meriel V. M. Bradford, Presiding Member Zdenek Kvarda, Member James A. Ogilvy, Member
Research Director:	Réal Roy
Senior Research Officer:	Sheena France
Research Officer:	Shawn Jeffrey
Counsel for the Tribunal:	Georges Bujold
Assistant Registrar:	Marija Renic

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

BACKGROUND

1. On December 28, 2006, the Canadian International Trade Tribunal (the Tribunal) received a request from NCI Marketing Inc. (NCI) for an interim review of the Tribunal's finding made on July 16, 2003, in Inquiry No. NQ-2002-004, with respect to carbon steel pipe nipples, threaded couplings and adaptor fittings, in nominal diameters up to and including 6 inches or the metric equivalents, originating in or exported from the People's Republic of China. In its request, NCI sought the rescission of the finding as it relates to carbon steel pipe nipples and threaded couplings, on the basis that they are no longer available from any Canadian producer. Furthermore, NCI claimed that the carbon steel pipe nipples and threaded couplings produced by CapProducts of Canada, Ltd. (CapProducts) are exported for sale in the United States and are not commercially available to Canadian purchasers. NCI did not request an interim review of adaptor fittings.

2. On January 19, 2007, the Tribunal notified the parties in Inquiry No. NQ-2002-004 that it had received a properly documented request for an interim review filed pursuant to section 76.01 of the *Special Import Measures Act*.¹

3. On February 12, 2007, CapProducts and CANIP Industries Ltd. (CANIP) responded to NCI's request and indicated that they both produced and sold carbon steel pipe nipples in Canada and provided evidence in confidential appendices. They responded to NCI's request only to the extent that it relates to carbon steel pipe nipples.

4. On February 16, 2007, NCI requested that CapProducts and CANIP withdraw the confidential appendices to their reply submission or, in the alternative, that the Tribunal refuse to accept the confidential appendices in light of the legislative requirements to provide a non-confidential version or summary to the Tribunal. On March 9, 2007, CapProducts and CANIP filed a non-confidential version of the evidence.

5. On March 19, 2007, NCI filed its reply brief and indicated that the silence of parties as regards threaded couplings indicated agreement with NCI's statement that threaded couplings are not commercially available in Canada. NCI further argued that the Tribunal should accept this uncontradicted evidence as establishing a change in circumstances that warrants a review and the rescission of the finding as it relates to threaded couplings. With respect to carbon steel pipe nipples, NCI argued that the evidence submitted by the parties set out new facts that demonstrated a significant change in circumstances since the date of the finding.

6. On April 3, 2007, the Tribunal requested that CapProducts and CANIP provide their views in relation to threaded couplings and specifically asked whether they accepted the relief proposed in respect of threaded couplings. On April 5, 2007, NCI objected to the Tribunal's request on the grounds that the parties had already made submissions on all the issues raised by the request for interim review and that it was improper to seek further submissions at this point in the proceedings. On April 11, 2007, having considered NCI's objection, the Tribunal determined that it was appropriate to request a clarification on a point that had already arisen from the exchange of submissions by the parties and informed them that it expected to receive the clarification requested. The Tribunal also notified the parties that NCI would be given an opportunity to respond, should CapProducts and CANIP file additional relevant information in their responses to the Tribunal's request.

7. On April 13, 2007, CapProducts and CANIP indicated that they did not produce threaded couplings in Canada and had no basis for accepting or objecting to NCI's request. They reiterated that an interim review of the Tribunal's finding in Inquiry No. NQ-2002-004 in relation to carbon steel pipe nipples was not

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

warranted. NCI responded the same day and requested that the Tribunal rescind its finding in relation to threaded couplings forthwith and maintained its position that the Tribunal should also rescind the finding as it relates to carbon steel pipe nipples.

ANALYSIS

8. The Tribunal notes that subsection 76.01(1) of *SIMA* provides that the Tribunal may conduct an interim review of a finding or order and that such an interim review may concern the whole finding or order or any aspect of it. However, pursuant to subsection 76.01(3), the Tribunal must not conduct an interim review unless the requester satisfies the Tribunal that the review is warranted.

9. In determining whether an interim review is warranted, the Tribunal must first determine whether the request for interim review is properly documented. In this connection, the Tribunal decides whether the requester has fulfilled the documentary requirements under subrule 70(1) of *Canadian International Trade Tribunal Rules*,² which indicates as follows:

A request . . . shall set out the following information:

(a) the name, address for service, telephone number and fax number, if any, of the person making the request and of their counsel, if any;

(b) the nature of their interest in the order or finding;

(c) the grounds on which the person believes initiation of the review is warranted and a statement of the facts on which the grounds are based; and

(d) the nature of the order or finding that the person believes the Tribunal should make under subsection 76.01(5) or 76.02(4) of the *Special Import Measures Act* on completion of the review.

10. In view of the information submitted by NCI and these requirements, the Tribunal is of the view that NCI's request is properly documented.

11. Subrule 70(2) of the *Rules* states the following:

On receipt of a properly documented request referred to in subrule (1), the Tribunal shall inform each party to the inquiry or review that resulted in the order or finding of its receipt of the request and shall give them an opportunity to make representations to the Tribunal concerning the request.

12. Accordingly, the Tribunal gave interested parties an opportunity to make representations, and it must now decide if an interim review is warranted. In light of subsection 76.01(3) of *SIMA*, interim reviews should only be undertaken when there are sufficiently compelling reasons to persuade the Tribunal to do so. New facts or changes in circumstances are not, in and of themselves, enough to warrant an interim review. It is reasonably expected that new facts will arise and circumstances will change over the course of a finding.

13. In determining whether an interim review is warranted, the Tribunal's practice is to take into consideration the grounds listed in rule 72 of the *Rules*, which are also found in the Tribunal's *Guideline on Interim Reviews* (the *Guideline*).

14. Rule 72 of the *Rules* states the following:

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;

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

- (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.

15. Similarly, the *Guideline* 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.

...

16. The *Guideline* also provides examples of sufficient new facts or changes in circumstances to illustrate the likely impact on a finding that these must have in order to warrant an interim review. In particular, it refers to situations in which the domestic industry has ceased the production of like goods.

17. In this case, the domestic producer involved in the initial inquiry did not reply; however, CapProducts and CANIP provided sufficient evidence to the Tribunal to indicate that the domestic industry still produces and sells carbon steel pipe nipples into the Canadian market. Thus, this is not a situation in which the domestic industry has ceased the production of like goods.

18. In light of the foregoing, the Tribunal is of the view that NCI has not provided evidence of sufficient new facts or changes in circumstances since the date of the finding to warrant an interim review of the Tribunal's finding in relation to carbon steel pipe nipples. Based on the Tribunal's injury finding in Inquiry No. NQ-2002-004, the domestic industry is entitled to expect that the remedy will not be disturbed for the full five years provided for in *SIMA*.

19. For the foregoing reasons, the Tribunal has determined that an interim review of the finding in Inquiry No. NQ-2002-004 as it relates to carbon steel pipe nipples is not warranted and has decided, pursuant to subsection 76.01(4) of *SIMA*, not to conduct an interim review of its finding made on July 16, 2003, in relation to carbon steel pipe nipples.

Meriel V. M. Bradford

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Presiding Member

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