



CERTAIN STAINLESS STEEL PIPE ORIGINATING IN OR
EXPORTED FROM THE UNITED STATES OF AMERICA

RULING OF THE CANADIAN INTERNATIONAL TRADE TRIBUNAL
IN REQUEST NO. IR-1-88
UNDER SECTION 90 OF THE *SPECIAL IMPORT MEASURES ACT*

Place of Hearing: Ottawa, Ontario

Public Hearing: March 13, 1989

Participants: Irving Miller
Alexandra Wedutenko
for The Deputy Minister
National Revenue, Customs
and Excise
Ottawa, Ontario
K1A 0L5

Eric R. Finn
for Ontario Hydro
Toronto, Ontario
M5G 1X6

(Company Which Made the Request)

May 25, 1989

CANADIAN INTERNATIONAL TRADE TRIBUNAL*

Panel:

Presiding Member:	Robert J. Bertrand, Q.C.
Member:	Raynald Guay
Member:	Arthur B. Trudeau

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*The Canadian Import Tribunal ceased to exist on December 31, 1988, and was replaced by the Canadian International Trade Tribunal.



Request No.: IR-1-88

Thursday, the 25th day of May 1989

PANEL: ROBERT J. BERTRAND, Q.C., PRESIDING MEMBER
RAYNALD GUAY, MEMBER
ARTHUR B. TRUDEAU, MEMBER

RULING UNDER SECTION 90 OF THE *SPECIAL IMPORT MEASURES ACT*
ON THE QUESTION OF WHO IS THE IMPORTER IN CANADA OF:

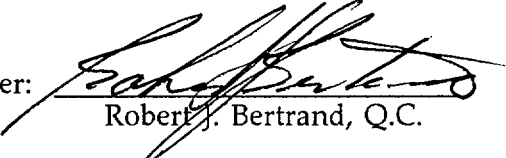
CERTAIN STAINLESS STEEL PIPE ORIGINATING IN OR
EXPORTED FROM THE UNITED STATES OF AMERICA

RULING

The Canadian International Trade Tribunal conducted an inquiry, pursuant to section 90 of the *Special Import Measures Act*, relative to a request by the Deputy Minister of National Revenue for Customs and Excise, on behalf of Ontario Hydro of Toronto, Ontario, for a ruling on the question of who is the importer in Canada of certain stainless steel pipe originating in or exported from the United States of America.

The Canadian International Trade Tribunal finds insufficient evidence to pronounce and, therefore, concludes that it has no basis in fact for making the ruling requested by the parties.

Presiding Member:


Robert J. Bertrand, Q.C.


Member:

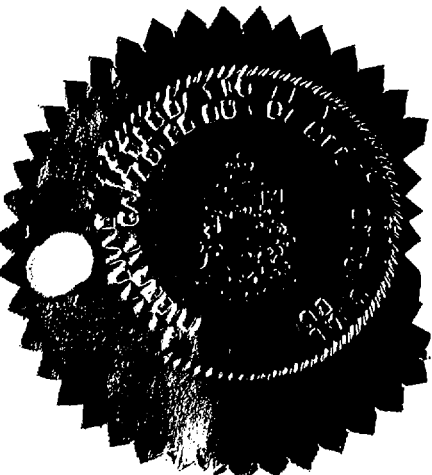

Raynald Guay

Member:


Arthur B. Trudeau

Witnessed:


Robert J. Martin
Secretary





Request No.: IR-1-88

REQUEST FOR A RULING UNDER SUBSECTION 89(1) OF
THE *SPECIAL IMPORT MEASURES ACT* BY
ONTARIO HYDRO ON THE QUESTION OF WHO IS THE IMPORTER IN CANADA OF:

CERTAIN STAINLESS STEEL PIPE ORIGINATING IN OR
EXPORTED FROM THE UNITED STATES OF AMERICA

PANEL: ROBERT J. BERTRAND, Q.C., PRESIDING MEMBER
RAYNALD GUAY, MEMBER
ARTHUR B. TRUDEAU, MEMBER

STATEMENT OF REASONS

This is a request made on December 30, 1988, pursuant to subsection 89(1) of the *Special Import Measures Act* R.S.C. 1985, C. S-15 (SIMA), by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) for a ruling by the Canadian Import Tribunal on the question of who is the importer in Canada of certain stainless steel pipe originating in or exported from the United States of America which is subject to anti-dumping duties. This request for a ruling was made on behalf of Ontario Hydro of Toronto, Ontario.

The ruling by the Tribunal is on the question of whether, in the case of future importations of the above-mentioned goods, Ontario Hydro or Guyon Alloys Export Corporation (Guyon Alloys) of Harrison, New Jersey (the firm's name has been changed to Radnor Alloys Export Corporation of Houston, Texas), would be the importer in Canada. Guyon Alloys is the company that shipped goods which were cleared through customs under entry numbers cited *infra* and on which anti-dumping duties have been levied against Ontario Hydro as it was identified by the Deputy Minister as the importer in Canada of the goods. The request for a ruling as to which company will be the importer in Canada in the case of future importations was based on the aforementioned historical transactions.

The application by the Deputy Minister to the Canadian Import Tribunal was made at the request of Mr. E.J. Steer, Customs Co-ordinator for Ontario Hydro of Toronto, Ontario.

On December 31, 1988, sections 16 to 37 and sections 41 to 62 of the *Canadian International Trade Tribunal Act* (the Act) came into force. As a result, the Canadian International Trade Tribunal was created and the Canadian Import Tribunal ceased to exist on that day. Transitional provisions of the Act have provided, however, that the members of the former Tribunal continue to have jurisdiction with respect to matters pending before the Canadian Import Tribunal on the day immediately preceding the commencement day. It is, therefore, in accordance with such transitional provisions that this ruling is made.

FACTUAL BACKGROUND

This request arises out of an investigation that the Deputy Minister initiated on June 20, 1983, pursuant to subsection 13(1) of the former *Anti-dumping Act* (R.S.C. 1970, C. A-15) respecting the dumping of certain stainless steel, nickel and nickel alloy pipe and tubing, welded and seamless (the subject goods), originating in or exported from the United States of America, the Federal Republic of Germany, the Republic of Korea (the listed countries) and Japan.

On January 13, 1984, the Deputy Minister, pursuant to subsection 14(1) of the *Anti-dumping Act*, made a preliminary determination of dumping respecting the subject goods originating in or exported from the listed countries.

On April 16, 1984, the Anti-dumping Tribunal, pursuant to subsection 15(3) of the *Anti-dumping Act*, found that, *inter alia*, the dumping in Canada of the subject goods from the listed countries had caused, was causing and was likely to cause material injury to the production in Canada of like goods (ADT-1-84).

On October 1984, the Deputy Minister, pursuant to subsection 17(1) of the *Anti-dumping Act*, made a final determination of dumping respecting the subject goods originating in or exported from the listed countries.

The finding of April 16, 1984, in Inquiry No. ADT-1-84 was amended by the Canadian Import Tribunal on April 18, 1986, to exclude tubing (Review No. R-16B-85) and on July 23, 1987, to exclude nickel and nickel alloy pipe (Review No. R-9-86).

On May 19 and 25, and August 19, 1987, the Deputy Minister advised Ontario Hydro that anti-dumping duties were payable with respect to certain goods cleared through the port of Toronto, Ontario, on May 31, July 5 and September 12, 1985, under entry numbers D421280, D433099 and D457399, respectively, on the grounds that (a) the goods fell within the purview of the determinations and findings cited *supra*; and (b) Ontario Hydro was the importer in Canada of such goods.

It is common ground between the Deputy Minister and Ontario Hydro that the conditions set out in paragraphs 89(1)(a) and 89(1)(b) of SIMA preclude the Tribunal to now rule on the question of who is the importer with respect to those goods that have already cleared customs under entry numbers cited *supra*. Nonetheless, the Tribunal has been asked to make a ruling as to who would be the importer in Canada with respect to future shipments of goods from the named exporter and subject to anti-dumping duty.

The provisions of SIMA relevant to this request are as follows:

89. (1) Where a question arises or is raised as to which of two or more persons is, for the purposes of this Act, the importer in Canada of goods imported or to be imported into Canada on which duty is payable or has been paid or will be payable if the goods are imported, the Deputy Minister may, and at the request of any person interested in the importation of the goods shall, request the Tribunal for a ruling on that question, unless, in the case only of goods that have been imported into Canada,

- (a) a determination has been made pursuant to section 55 or subsection 56(1) with respect to the goods; and
- (b) more than ninety days have elapsed since the determination referred to in paragraph (a) was made.

[...]

90. Where a request is made to the Tribunal under subsection 89(1) for a ruling on the question referred to therein, the Tribunal

- (a) shall arrive at its ruling on the question by determining which of two or more persons is the importer in Canada of the goods;
- (b) subject to paragraph (c), shall give its ruling on the question forthwith after receiving the request therefor; ...

THE ISSUE

The issue on which the Tribunal has been requested to make a ruling is whether, as between Ontario Hydro and Guyon Alloys, Ontario Hydro is, pursuant to subsection 89(1) of SIMA, "the importer in Canada of goods ... to be imported into Canada on which duty ... will be payable if the goods are imported."

Specifically, the Tribunal has been asked to rule on which of the two companies, Guyon Alloys or Ontario Hydro, is the importer of future shipments of goods which, if imported into Canada, would be subject to anti-dumping duty pursuant to the finding in Inquiry No. ADT-1-84 (as amended).

The Tribunal has been asked to make this determination exclusively on the basis of documents pertaining to goods that have already been imported into Canada under entry number D457399 on September 12, 1985.

ARGUMENTS

Counsel for the Deputy Minister argued that it is possible to make a ruling on future importations based on documents relating to past importations. Such rulings may be based on typical, or what can be determined to be typical, transactions. Counsel contended that the transaction, which is purported to be evidenced by documents pertaining to goods imported under entry number D457399, is typical.

Counsel for Ontario Hydro argued that the phrase "to be imported into Canada" embodies the notion that there is a pending transaction, i.e. there is a plan or proposal to import certain known goods. Consequently, the Tribunal cannot make an importer ruling with respect to future shipments on the basis of historical transactions alone.

DECISION

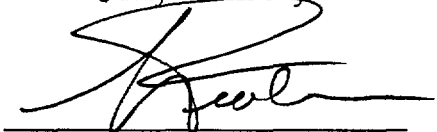
The Tribunal is in agreement with the parties' position that it does not have jurisdiction to rule on the question of who is the importer in Canada for the goods which were entered in Canada in 1985 as mentioned earlier. The reasons for this lack of jurisdiction stems from the requirements of paragraphs (a) and (b) of subsection 89 (1) of SIMA which set the time limit of

90 days for requesting a ruling after a determination has been made. Such time requirements were not met.

Although the Tribunal has jurisdiction to rule with respect to future importations, it is of the view that such a ruling must be based on evidence of a future importation with details of the commercial transaction between the exporter and importer in Canada, and conditions of sale. The Tribunal should not be asked to rule in a vacuum. To pronounce, some evidence is required: such as purchase orders, irrevocable tenders and other such concrete evidence of future importations or agreements for future importations. These would be required for issuing a ruling as to which of the two persons would be the importer in Canada in accordance with the requirements of SIMA. The evidence which was adduced in these proceedings all related to past transactions. There were no indications that these transactions were being repeated, neither was there sufficient evidence available to elucidate the question submitted to the Tribunal. For the foregoing reasons, the Tribunal finds insufficient evidence to pronounce and, therefore, concludes that it has no basis in fact for making the ruling requested by the parties.

Presiding Member: 
Robert J. Bertrand, Q.C.

Member: 
Raynald Guay

Member: 
Arthur B. Trudeau

Witnessed: 
Robert J. Martin
Secretary

