



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DECISION
AND REASONS

Public Interest Inquiry
No. PB-2013-001

Circular Copper Tube

*Decision issued
Monday, April 14, 2014*

*Reasons issued
Thursday, April 24, 2014*

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IN THE MATTER OF representations as to whether there are reasonable grounds to consider that the imposition, in whole or in part, of anti-dumping duties on imports of circular copper tube originating in or exported from the Federative Republic of Brazil, the Hellenic Republic, the People's Republic of China, the Republic of Korea and the United Mexican States and of countervailing duties on imports of circular copper tube originating in or exported from the People's Republic of China, as a result of the Canadian International Trade Tribunal's findings dated December 18, 2013, in Inquiry No. NQ-2013-004 conducted pursuant to section 42 of the *Special Import Measures Act*, would not or might not be in the public interest pursuant to 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 anti-dumping or countervailing duties, or the imposition of such duties 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-2013-004 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.

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Pasquale Michaele Saroli
Presiding Member

Daniel Petit
Daniel Petit
Member

Ann Penner
Ann Penner
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The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On December 18, 2013, in Inquiry No. NQ-2013-004, the Canadian International Trade Tribunal (the Tribunal) found, pursuant to subsection 43(1) of the *Special Import Measures Act*,¹ that the dumping of circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 centimetre to 10.795 centimetres) excluding industrial and coated or insulated copper tube (the subject goods), originating in or exported from the Federative Republic of Brazil (Brazil), the Hellenic Republic (Greece), the People's Republic of China (China) and the Republic of Korea, and the subsidizing of the same goods originating in or exported from China had caused material injury to the domestic circular copper tube industry. Pursuant to subsections 43(1) and (1.01), the Tribunal also found that the dumping of the subject goods originating in or exported from the United Mexican States had caused injury.

2. 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 it is of the opinion that there are reasonable grounds to consider that the imposition of anti-dumping or countervailing duties, or the imposition of such duties in the full amount, would not or might not be in the public interest.

3. On February 13, 2014, the Tribunal notified all those who received a copy of its injury findings in Inquiry No. NQ-2013-004 that it had received properly documented requests for a public interest inquiry from Halcor Metal Works S.A. (Halcor), a producer and exporter of the subject goods in Greece, and from Paranapanema S.A. (Paranapanema), a producer and exporter of the subject goods in Brazil. Interested persons were invited to file submissions supporting or opposing the initiation of a public interest inquiry.

4. The Tribunal received submissions opposing the initiation of a public interest inquiry from Great Lakes Copper Inc. (GLC), which the Tribunal determined in Inquiry No. NQ-2013-004 to be the only domestic producer of copper tube.² Submissions supporting the initiation of a public interest inquiry were submitted by Nolrad International Inc. (Nolrad), an importer of the subject goods from Greece and other subject and non-subject countries. The European Commission also filed a submission in support of Halcor's request.

5. Paranapanema withdrew its request for a public interest inquiry on March 18, 2014.³ As a result, only Halcor's request remained active before the Tribunal.

LEGAL FRAMEWORK

6. For the Tribunal to initiate a public interest inquiry, the Tribunal must be of the opinion that there are reasonable grounds to consider that the imposition of duties in respect of imports of the subject goods, or the imposition of such duties in the full amount, would not or might not be in the public interest.⁴

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

2. Inquiry No. NQ-2013-004 at para. 61.

3. Public Interest Inquiry No. PB-2013-002 was terminated as a result.

4. Subsection 45(1) of *SIMA*. The fact that the Tribunal considered Halcor's request to be properly documented did not imply a judgment on whether it would initiate a public interest inquiry. The requirement that requests be properly documented simply ensures that the Tribunal has, in its possession, sufficient information to enable it to decide whether there are reasonable grounds to consider that the imposition of duties, or the imposition of such duties in the full amount, would not or might not be in the public interest.

7. Anti-dumping and/or countervailing duties imposed pursuant to *SIMA* are the remedial consequence intended by Parliament to injury or the threat of injury to the domestic industry from dumped and/or subsidized imports.⁵ Section 45 of *SIMA* allows for the examination of the appropriateness of this remedy in a particular case if and only if a *bona fide* public interest consideration has been identified. In the absence of an identifiable public interest consideration, the Tribunal will not initiate a public interest inquiry.

8. The Tribunal has previously stated what may be considered a “public interest”. For instance, depending on the circumstances, “public interest” may refer to the interests of the public at large, or to those of a segment of that public, provided the effects of the imposition of duties on supply, competition, competitiveness or the welfare of downstream industries, customers or users are sufficient to represent a “public interest”.⁶

9. In the context of a request for a public interest inquiry, the Tribunal will examine, whether, given all the circumstances in the Canadian market, there are reasonable grounds to consider that the duties will result or may result in negative effects that run counter to the public interest.⁷ To that end, the Tribunal considers the following factors set out in subsection 40.1(3) of the *Special Import Measures Regulations*:⁸

For the purposes of subsection 45(3) of the Act, the following factors are prescribed:

(a) whether goods of the same description are readily available from countries or exporters to which the order or finding does not apply;

(b) whether imposition of an anti-dumping or countervailing duty in the full amount

(i) has eliminated or substantially lessened or is likely to eliminate or substantially lessen competition in the domestic market in respect of goods,

(ii) has caused or is 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,

(iii) has significantly impaired or is likely to significantly impair competitiveness by

(A) limiting access to goods that are used as inputs in the production of other goods and in the provision of services, or

(B) limiting access to technology, or

(iv) has significantly restricted or is likely to significantly restrict the choice or availability of goods at competitive prices for consumers or has otherwise caused or is otherwise likely to cause them significant harm;

(c) whether non-imposition of an anti-dumping or countervailing duty or the non-imposition of such a duty in the full amount provided for in sections 3 to 6 of the Act is likely to cause significant damage to domestic producers of inputs, including primary commodities, used in the domestic manufacture or production of like goods; and

(d) any other factors that are relevant in the circumstances.

10. Consistent with the legislative framework, it is incumbent on the requester to demonstrate to the Tribunal that the initiation of a public interest inquiry is warranted. The Tribunal has been clear that the requester bears the onus of presenting a *prima facie* case, supported with specific evidence that the

5. *Interpretation Act*, R.S.C., 1985, c. I-21, section 12.

6. *Aluminum Extrusions* (30 June 2009), PB-2008-003 (CITT) at para. 11.

7. See, for example, *Aluminum Extrusions* at para. 16; *Carbon Steel Welded Pipe* (19 December 2008), PB-2008-001 (CITT) at para. 15; *Refined Sugar* (4 April 1996), PB-95-002 (CITT) at 3-5.

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

imposition of anti-dumping or countervailing duties, or the imposition of such duties in the full amount provided for by SIMA in respect of the goods, would not or might not be in the public interest.⁹

ANALYSIS

Parties' Positions

11. Halcor's request was essentially based on the argument that imposing the full amount of duties on its exports is against the public interest because the duties will be "... far in excess of the duties required to offset the injury caused [to the domestic industry] by [the] dumping"¹⁰ of the subject goods from Greece, which only caused a minimal amount of injury. According to Halcor, "excessive" duties are inconsistent with Canada's obligations under the WTO *Anti-dumping Agreement*¹¹ and also constitute a factor¹² warranting the initiation of a public interest inquiry. Further, such "excessive" duties restrict its access to the Canadian market, which, in turn, negatively affects competition, consumers and producers in Canada. Halcor submitted that the availability of copper tube from other countries or exporters is not a relevant factor in this case. Finally, Halcor submitted that the fact that the Canada Border Services Agency (CBSA) calculates "static" normal values, on the basis of Halcor's costs of production in a given period, which do not reflect subsequent fluctuations in the cost of copper, will exacerbate the anti-competitive effects of the duties.

12. In support of Halcor's request, Nolrad also noted a concern about the CBSA's normal values regime, explaining that static normal values make the price of copper tube unpredictable and make the product difficult to price competitively, as it can no longer fluctuate with the price of copper, in accordance with the standard market pricing practice. Nolrad also indicated, without further detail, that it has met with the CBSA regarding this issue. Nolrad noted that it hopes to place orders soon for the subject goods from Brazil and from Greece (with Halcor). Further, Nolrad stated that there are limited alternative sources of copper tube, as the only supplier in Chile has shut down and there are rumours that GLC might lodge a new anti-dumping complaint against imports from Vietnam. Nolrad added that demand for copper tube is much higher than what is currently available from GLC and non-subject countries, as evidenced by the fact that Nolrad has standing orders from many customers¹³ and that it has been able to sell copper tube without having to reduce its prices to meet those offered by competitors in Vietnam. Nolrad concluded that this scarcity will have repercussions on competition and choice/availability of product at all market levels and will also increase incentives for copper theft.

13. The European Commission supported Halcor's request, noting in this regard that the application of a "lesser duty" rule is a systematic feature of European legislation.

14. GLC opposed the initiation of a public interest inquiry, arguing that Halcor's request goes beyond the intended scope of section 45 of *SIMA* and fails to provide reasonable grounds to consider that a public interest inquiry is warranted. According to GLC, the suggestion that duties in excess of what is required to offset injury are, in and of themselves, contrary to the public interest is inconsistent with the legislative

9. See, for example, *Carbon Steel Welded Pipe* at para. 14; *Aluminum Extrusions* at para. 16.

10. Exhibit PB-2013-001-01, Vol. 1 at para. 26.

11. Halcor referred to Article 11.1 of the WTO *Anti-dumping Agreement*, which provides that "[a]n anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury."

12. Pursuant to paragraphs 40.1(2)(e) and 40.1(3)(d) of the *Regulations*.

13. Further details were provided in Nolrad's confidential submission. See Exhibit PB-2013-001-05.02 (protected), Vol. 2.

intent of *SIMA*, which purposely does not contain a “lesser duty” requirement. Rather, *SIMA* provides for the possibility of applying reduced duties pursuant to section 45, only if, having regard to the prescribed factors, the Tribunal concludes that it would be in the public interest to do so. Further, there is no mandatory “lesser duty” requirement in the WTO *Anti-dumping Agreement*, and Halcor’s suggestion is also inconsistent with Canada’s negotiating position in the Doha Round of negotiations. GLC contends that the argument regarding static normal values constitutes a collateral attack on the CBSA’s final determination and potentially calls upon the Tribunal to set aside Canada’s prospective duty assessment system. While GLC recognized that the volatility of copper pricing poses enforcement challenges, it submitted that they are best addressed through other mechanisms under *SIMA*. Finally, GLC added that the request falls short of the evidentiary standard for the initiation of a public interest inquiry which requires the requester to make a *prima facie* case that the initiation of such an inquiry is appropriate considering the factors prescribed in subsection 40.1(3) of the *Regulations*. GLC submitted that copper tube is available from countries or exporters that are not subject to the findings, notably from Vietnam, and that GLC continues to compete with imports and remains a price taker.

15. In reply, Halcor argued that its request is within the scope of section 45 of *SIMA* and paragraph 40.1(3)(d) of the *Regulations*, that the basis for its request is that the duties imposed on its products are far in excess of the amounts actually required to offset the injury caused by them, which results in problems for purchasers and end users in the Canadian market, that the issue of static normal values is a relevant factor, despite the possibility of recourse to other statutory mechanisms, that its request reaches the threshold for the initiation of a public interest inquiry and that Nolrad’s submissions evidence supply problems in the Canadian market, which cannot be disregarded and which add to the grounds for initiation.

A Public Interest Inquiry Is Not Warranted

16. Taking into account the factors in subsection 40.1(3) of the *Regulations*, the Tribunal is of the view that Halcor’s request, as supported by Nolrad’s submissions, does not provide reasonable grounds to consider that the imposition of duties in respect of imports of the subject goods from Greece, or the imposition of such duties in the full amount, is not or might not be in the public interest.

17. Halcor has based its request largely, if not entirely, on unsubstantiated allegations.¹⁴ Halcor’s allegations of purported market access restriction appear to be contradicted by Nolrad’s statement that it hopes to place orders with Halcor.¹⁵ However, even taken at face value, Halcor’s request addresses nothing more than purported negative effects of the duties on its own private interests. Halcor has failed to provide a reasonable indication that the Canadian market for copper tube has been or is likely to be negatively impacted in any significant way.¹⁶ Halcor admits that copper tube from non-subject countries, in particular from Vietnam, is currently readily available in Canada;¹⁷ the suggestion that this source of imports may be shut out by a future anti-dumping complaint is purely speculative and, therefore, not germane to the present context.

18. Nolrad’s submissions do not supplement the lack of evidentiary support for Halcor’s allegations. Information provided by Nolrad may indicate that demand for Nolrad’s imports has been higher than previously for the same season. On that basis, Nolrad argued that there is insufficient supply of copper tube

14. Exhibit PB-2013-001-01, Vol. 1 at paras. 41-45.

15. Exhibit PB-2013-001-04.02, Vol. 1.

16. This is so especially in light of Halcor’s own submission that it has never been, and is unlikely to be, a significant exporter of copper tube to Canada. Exhibit PB-2013-001-01, Vol. 1 at para. 14 and Attachment 1.

17. Exhibit PB-2013-001-01, Vol. 1 at paras. 46-48; Exhibit PB-2013-001-08.01, Vol. 1 at paras. 60-61.

in the Canadian market. However, the fact that Nolrad's customers may have relied more heavily on an alternative supplier in recent months¹⁸ falls short of providing a reasonable indication of a significant supply issue as a result of the Tribunal's findings in Inquiry No. NQ-2013-004. In particular, it fails to provide an indication that the duties imposed on the subject goods from Greece would not or might not be in the public interest.

19. The Tribunal notes that it is normally to be expected that the market will adjust as necessary to new sources of supply following an injury finding. Nothing indicates that there are barriers to such an adjustment in this case. On the contrary, the apparent rapid appearance of Vietnamese copper tube in the Canadian market following the findings indicates that such an adjustment has already started.¹⁹

20. Halcor argued that duties imposed on its exports as a result of the findings are in excess of those that would be required to offset the injury caused to the domestic industry by the dumping of its exports and that this purported situation should be viewed as another factor, under paragraph 40.1(3)(d) of the *Regulations*, that warrants the initiation of a public interest inquiry.²⁰ The Tribunal was not persuaded by Halcor's argument. While the application of a "lesser duty" is a potential response to a particular public interest concern, the "lesser duty" principle is not, in and of itself, a consideration that could warrant the initiation of a public interest inquiry, as argued by Halcor. In other words, if a broader public interest is believed to exist, a "lesser duty" methodology can be recommended, under paragraph 45(5)(b) of *SIMA*, as a means to address the concern. However, the alleged scope for the application of a "lesser duty" does not, in and of itself, constitute a basis for the initiation of a public interest inquiry under the statutory scheme of *SIMA*.²¹ Indeed to suggest otherwise would be tantamount to regularizing the application of "lesser duty" in Tribunal injury inquiries, contrary to the clear legislative intent of *SIMA*.

21. There is simply no legislative basis to commence a public interest inquiry on the claim that duties duly determined to be applicable under *SIMA* exceed what is necessary to address the injury being caused by the subject goods. Other than in response to a public interest identified as a result of an inquiry under section 45 of *SIMA*, Parliamentary intent, as reflected in the statutory scheme, does not provide for a mechanism to reduce the remedial duties determined in the manner prescribed by *SIMA*.²²

18. Nolrad represents itself as a secondary or alternative source of supply. Exhibit PB-2013-001-04.02, Vol. 1.

19. Exhibit NQ-2013-004-06, Vol. 1.1, Table 4.

20. See, in particular, Halcor's summary of its own position and supporting evidence, Exhibit PB-2013-001-08.01, Vol. 1 at paras. 37-39.

21. The *Government Response to the Report on the Special Import Measures Act by the Sub-Committee on the Review of the Special Import Measures Act of the Standing Committee on Finance and the Sub-Committee on Trade Disputes of the Standing Committee on Foreign Affairs and International Trade*, Exhibit PB-2013-001-06.01, tab 2, states as follows: "Amending section 45 of SIMA, as recommended by the Sub-committees, would allow the CITT to employ a lesser-duty methodology in the context of a finding of public interest. *Therefore, once the CITT is of the opinion that there is a public interest concern, it could then use the lesser-duty approach to recommend a level of duty that would remove injury while minimizing the impact on other sectors of the economy. In this regard, a lesser duty calculation would not be a requirement but rather an alternative methodology for the calculation of the duty margin where issues of public interest are addressed*" [emphasis added]. See, also, *Report on the Special Import Measures Act* by the Sub-Committee on the Review of the Special Import Measures Act of the Standing Committee on Finance and the Sub-Committee on Trade Disputes of the Standing Committee on Foreign Affairs and International Trade, House of Commons, Ottawa, December 1996, on-line: http://www.parl.gc.ca/content/hoc/archives/committee/352/fore/reports/04_1996-12/fore-04-cov-e.html.

22. Subsection 3(1) of *SIMA* provides for the imposition of the full amount of duties, that is, duties in the amount equal to the margin of dumping. Subsection 2(1) defines the margin of dumping, in relation to any goods, as the amount by which the normal value of the goods exceeds the export price of the goods.

22. Halcor also argued that, by adopting normal values on the basis of its costs of production, including the cost of copper, in a given period of time, the CBSA has adopted unrepresentative normal values which further exacerbate the negative impact on competition in the Canadian market.²³ However, as indicated above, the Tribunal finds that Halcor, as supported by Nolrad, failed to provide sufficient evidence of any significant public interest considerations that have resulted or are likely to result from the application of the duties. In addition, the Tribunal is of the view that issues concerning normal value determinations are properly addressed through recourse to the CBSA's existing administrative processes, as well as to those already provided for by Parliament under sections 59 to 61 of *SIMA*. Indeed, given the practical, administrative considerations associated with the enforcement of the findings and, in particular, those arising from the volatility of copper prices, the CBSA is best placed to specify representative and administrable methodologies for determinations of normal value, export price and margins of dumping.

23. Finally, the Tribunal remarks that the subject goods in Inquiry No. NQ-2013-004 concerned five subject countries, whereas Halcor's submissions concern the subject goods from Greece only. Halcor's historic volume of sales in the Canadian market has been low.²⁴ The Tribunal was presented with no evidence to the effect that the Tribunal's findings in Inquiry No. NQ-2013-004 have had any effects beyond the discrete ones purported to have been felt by Halcor itself. In sum, the Tribunal finds no evidence of significant negative effects on the public interest warranting the initiation of a public interest inquiry.

CONCLUSION

24. For all the above reasons, the Tribunal is of the opinion that there are no reasonable grounds to consider that the imposition of anti-dumping or countervailing duties, or the imposition of such duties in the full amount provided for by *SIMA*, in respect of the goods referred to in the Tribunal's findings in Inquiry No. NQ-2013-004 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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23. Exhibit PB-2013-001-01, Vol. 1 at paras. 52-61.

24. Exhibit PB-2013-001-01, Vol. 1 at paras. 11-14.