Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Inquiry No. NQ-2015-002

Carbon and Alloy Steel Line Pipe

Order issued
Tuesday, January 19, 2016

Reasons issued
Tuesday, January 26, 2016

Canada

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IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting the dumping and subsidizing of carbon and alloy steel line pipe originating in or exported from the People's Republic of China;

AND IN THE MATTER OF a request filed by Pipe & Piling Supplies Ltd. on December 21, 2015, for an order denying the participation of Atlas Tube Canada ULC and DFI Corporation in the inquiry on the basis that they are not "interested parties", as defined in rule 2 of the *Canadian International Trade Tribunal Rules*.

ORDER

The Canadian International Trade Tribunal hereby dismisses the request.

Jean Bédard
Jean Bédard
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Ann Penner
Ann Penner
Member

The statement of reasons will be issued at a later date.

STATEMENT OF REASONS

OVERVIEW

1. On December 21, 2015, Pipe & Piling Supplies Ltd. (P&P) filed a request with the Canadian International Trade Tribunal (the Tribunal) to deny Atlas Tube Canada ULC (Atlas) and DFI Corporation (DFI) the right to participate in this injury inquiry under section 42 of the *Special Import Measures Act*.[1]

2. The reasons for the Tribunal's order dismissing the request are stated below.[2]

BACKGROUND

3. On November 27, 2015, the Tribunal commenced the injury inquiry, pursuant to section 42 of *SIMA*, concerning the dumping and subsidizing of carbon and alloy steel line pipe (the subject goods) originating in or exported from the People's Republic of China.

4. Both Atlas[3] and DFI[4] filed notices of participation in relation to these proceedings. In Preliminary Injury Inquiry No. PI-2015-002 concerning carbon and alloy steel line pipe, they were identified as producers of steel piling pipe and filed submissions in support of the complaint.

5. In its request dated December 21, 2015, P&P submitted that Atlas and DFI should not be permitted to participate in the injury inquiry because they are not "interested parties" as defined in rule 2 of the *Canadian International Trade Tribunal Rules*.[5]

6. On December 21, 2015, the Tribunal received correspondence from counsel for the China Iron and Steel Association (CISA) and other parties, indicating their support for P&P's request.

7. On December 23, 2015, the Tribunal invited counsel and parties of record, including Atlas and DFI, to provide comments on P&P's request. The Tribunal received submissions opposing the request from Atlas and DFI on January 7, 2016, and from Tenaris Global Services (Canada) Inc., Algoma Tubes Inc. and Prudential Steel ULC (collectively Tenaris Canada) and Evraz Inc. NA Canada (Evraz) on January 8, 2016.

8. P&P and CISA filed their respective replies to the submissions opposing the request on January 12 and 13, 2016.

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1. R.S.C., 1985, c. S-15 [*SIMA*].
2. Although P&P did not file a notice of motion pursuant to rule 24 of the *Rules*, it later referred to its request as a "motion" in its reply submission dated January 12, 2016. However, the Tribunal found it appropriate to consider P&P's request as a written request for an order under rule 23.1, which provides as follows: "(1) A party may make a request to the Tribunal for a decision or order on any matter that arises in the course of a proceeding, other than in respect of a matter referred to in rule 33, 42 or 43. (2) The party who makes the request shall serve a copy of it on the other parties at the same time as it is filed with the Tribunal."
3. On September 8, 2015, Atlas filed a notice of participation in Preliminary Injury Inquiry No. PI-2015-002. The same day, counsel for Atlas filed a notice of representation. On November 28, 2015, counsel for Atlas filed an extended declaration and undertaking in relation to the final injury inquiry.
4. On September 9 and 10, 2015, DFI filed a notice of participation in Preliminary Injury Inquiry No. PI-2015-002. On September 10 and 17, 2015, counsel for DFI filed notices of representation. On December 11 and 14, 2015, counsel for DFI filed extended declarations and undertakings in relation to the final injury inquiry.
5. S.O.R./91-499 [*Rules*].

POSITIONS OF PARTIES

P&P

9. As stated above, P&P submitted that Atlas and DFI bear the burden of establishing that they are "interested parties" as defined in rule 2 of the *Rules* in order to be entitled to participate in this injury inquiry. In its view, they have failed to do so in this case. In particular, P&P relied on the Tribunal's determination, in Preliminary Injury Inquiry No. PI-2015-002, that Atlas and DFI are not part of the domestic industry, as they do not produce "like goods" in relation to the subject goods. P&P argued that, as domestic producers of steel piling pipe, Atlas and DFI have no rights or pecuniary interests that may be affected by the Tribunal's finding in the injury inquiry nor is there any other reason for which they should be entitled to participate in these proceedings.

10. P&P further submitted that allowing Atlas and DFI to file arguments and evidence concerning the impact of the subject goods on the domestic producers of piling pipe would invite the Tribunal to make a finding on the basis of irrelevant considerations and would add unnecessary time and effort to the proceedings. In addition, P&P alleged that Atlas's and DFI's participation would permit them to circumvent the requirements under *SIMA* for properly filing and pursuing a dumping or subsidizing complaint.

Atlas and DFI

11. Atlas and DFI submitted that the Tribunal should reject the request on the basis that they both meet the legal and procedural requirements for full participation in this injury inquiry. They referred to the Tribunal's notice of commencement of inquiry dated November 27, 2015, which simply states that each person wishing to participate in the inquiry must file a notice of participation, with no mention of any conditions for participation that need to be established.

12. Even if there was a burden of proof on would-be participants, which Atlas and DFI denied, they asserted that their rights and pecuniary interests will be directly affected by the outcome of this injury inquiry and that, therefore, they are "interested parties" pursuant to rule 2 of the *Rules*. In particular, they alleged that imports of the subject goods are being sold in the Canadian piling pipe market in circumvention of the Tribunal's finding in Inquiry No. NQ-2012-002.[6] They added that they intend to provide information regarding such import activities in the Canadian market and the related effects on domestic producers of both line pipe and piling pipe.

13. The Tribunal's determination that Atlas and DFI are not part of the domestic industry for the purposes of this injury inquiry should not, in their view, have any bearing on whether they are "interested parties". In this regard, they referred to past examples where parties other than foreign producers, exporters or importers of the subject goods or domestic producers of the like goods participated in *SIMA* proceedings without having to prove the nature of their interest.[7]

14. Atlas and DFI submitted that they should be given the right to present their respective arguments and evidence in an open, fair and transparent inquiry. It will then be for the Tribunal to determine the relevance and probative value of such evidence.

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6. *Steel Piling Pipe* (30 November 2012), NQ-2012-002 (CITT).
7. For example, DFI referred to the participation of parties other than producers or importers in *Liquid Dielectric Transformers* (20 November 2012), NQ-2012-001 (CITT), *Dry Pasta* (2 June 1997), NQ-95-003R (CITT) and *Boneless Manufacturing Beef* (22 July 1991), RR-90-006 (CITT).

Tenaris and Evraz

15. Tenaris and Evraz support the participation of Atlas and DFI in these proceedings on the basis of a liberal interpretation of the procedural rules relating to the nature of a person's interest in an injury inquiry. In particular, Evraz submitted that a plain reading of the term "interested party" under rule 2 of the *Rules* shows that it is broadly worded to allow the Tribunal wide discretion in determining whether a person is entitled to participate in an injury inquiry. Evraz argued that this broad discretion is consistent with the Tribunal's authority to direct its own procedure in the interest of fairness and expediency.[8] Evraz further submitted that the Tribunal will be better situated to address the weight or impact of the participation of Atlas and DFI after the injury inquiry is conducted.

Replies by P&P and CISA

16. In reply, P&P argued that any person who files a notice of participation in relation to an inquiry should not automatically be allowed to participate but, rather, that the person bears the onus of establishing the nature of his or her interest in the proceedings. In its view, a proper interpretation of the definitions of "party"[9] and "interested party" under rule 2 of the *Rules* clearly shows that a person must be an "interested party" as a precondition to filing a notice of participation in an injury inquiry and that such notice should be considered by the Tribunal as a request[10] for the right to appear as a "party".

17. According to P&P, it is implicit in the *Rules* that the person seeking to participate ". . . must be able to establish . . ."[11] his or her interest in the injury inquiry. In its reply, it states as follows:

> If the open-ended interpretation presented by the opposing parties is accepted, any person who files a notice of participation would be a party regardless of whether they [have] an interest in the Inquiry. This would throw open the doors to any number of potential parties who would appear, file evidence with little or no probative value, make submissions that may not be on point, and who could have access to the confidential record. The Tribunal, and all other actual parties, would be forced to wade through this evidence to determine whether any of it is relevant. The result would be an unnecessarily extended and expensive process.[12]

18. P&P submitted that Atlas and DFI have failed to establish that they are "interested parties" for the purposes of this injury inquiry. In its view, it is irrelevant that they participated in the preliminary injury inquiry and incurred expenses in relation to the injury inquiry. In addition, P&P submitted that the only pecuniary interest identified by Atlas and DFI relates exclusively to the alleged impact of line pipe imports on their piling pipe production, which does not establish any right to participate in the injury inquiry concerning line pipe. P&P alleged that Atlas and DFI are seeking to gain the benefits of anti-dumping or

8. In this regard, Evraz relies on rules 5 and 6 of the *Rules*. Rule 5 states that "where, in any proceeding, a question of procedure arises to which these Rules do not provide an answer, or the answer they do provide is incomplete, the question shall be disposed of, consistently with such, if any, of these Rules as are applicable, in such a manner as the Tribunal directs." Rule 6 states that "the Tribunal may dispense with, vary or supplement any of these Rules if it is fair and equitable to do so or to provide for a more expeditious or informal process, as the circumstances and considerations of fairness permit."
9. The term "party" is defined under Rule 2 as "an interested party who has filed a notice of participation in the inquiry" under section 42 of *SIMA*.
10. In this respect, P&P relies on the use of the word "proposes" in Rule 10 of the *Rules*, which states that "[a] person who proposes to participate in a proceeding … shall file with the Tribunal a notice of participation".
11. Exhibit NQ-2015-002-42 at para. 16, Vol. 1C.
12. *Ibid.* at para. 12.

countervailing duties without following the proper procedures under *SIMA* (i.e. enforcement of an existing finding or filing a new complaint), which amounts to an abuse of process.

19. Finally, P&P did not contest that the Tribunal may accept evidence on a very liberal basis and then give it the weight that it deserves. However, it considers this practice to be irrelevant to the issue of whether Atlas and DFI have established the right to appear before the Tribunal in this injury inquiry.

20. CISA also filed reply submissions. With respect to the meaning of the term "interested parties", CISA disputed the interpretation presented by the parties opposed to the request as allowing unfettered access to "any" entity who wish to participate in "any" inquiry. Instead, it submitted that the definition of interested parties is broad for the sole purpose of enabling the Tribunal the discretion to include those parties it may determine are "interested parties". It argued that the Tribunal should exclude Atlas and DFI from this injury inquiry because it has already determined that they are not part of the domestic industry and they have failed to provide any evidence to demonstrate another legitimate interest-based reason to participate in this injury inquiry.

ANALYSIS

21. Rule 2 of the *Rules* defines the terms "party" and "interested party" as follows:

> "party" means
>
> > (*a*) in the case of an inquiry under section 42 or 45 of the *Special Import Measures Act* or a review under section 76.01, 76.02, 76.03 or 76.1 of that Act, an interested party who has filed a notice of participation in the inquiry or review, as the case may be, in accordance with these Rules,
>
> . . .
>
> "interested party", in relation to an inquiry under section 42 or 45 of the *Special Import Measures Act* or a review under section 76.01, 76.02, 76.03 or 76.1 of that Act, means
>
> > (*a*) the complainant, if any, under section 31 of that Act in the investigation in which the preliminary determination referred to in section 42 of that Act was made,
> >
> > (*b*) any domestic producer, exporter to Canada or importer into Canada of goods in respect of which the preliminary determination was made,
> >
> > (*c*) an association of, or that includes, domestic producers, exporters to Canada or importers into Canada of goods in respect of which the preliminary determination was made,
> >
> > (*d*) the government of any country mentioned in the preliminary determination, and
> >
> > (*e*) any other person who, because their rights or pecuniary interests may be affected or for any other reason, is entitled to be heard by the Tribunal before the Tribunal disposes of the inquiry or the review, as the case may be, in accordance with that Act . . . .

22. Rule 10 of the *Rules* states that "[a] person who proposes to participate in a proceeding, other than a proceeding under Part II or Part X, shall file with the Tribunal a notice of participation . . . ."

23. Accordingly, in order for a person who files a notice of participation to be considered an "interested party" for the purposes of an injury inquiry under section 42 of *SIMA*, he or she must fall within one of the categories set out under rule 2 of the *Rules*. This includes complainants, domestic producers of like goods (or associations thereof), exporters or importers of goods (or associations thereof) and the government of a subject country. Pursuant to paragraph (*e*) of the definition of "interested party", this also includes "any

other person" who meets one of the following conditions: (1) his or her rights may be affected; (2) his or her pecuniary interests may be affected; or (3) for any other reason.

24. The Tribunal has discretionary authority to determine whether or not a person who files a notice of participation constitutes an "interested party". It generally interprets its rules in a liberal manner and with a view to promoting fairness, access to justice and transparency.

25. This approach is based on rule 3 of the *Rules*, which states that "[t]hese Rules shall be liberally construed to secure the fairest, least expensive and most expeditious determination of every proceeding, in accordance with section 35 of the Act". Section 35 of the *Canadian International Trade Tribunal Act*[13] states that all hearings before the Tribunal ". . . shall be conducted as informally and expeditiously as the circumstances and considerations of fairness permit."

26. The above statutory provisions imply that the Tribunal is the master of its own procedure, provided it follows the rules of natural justice, including procedural fairness.[14] This principle is also embodied in rules 5 and 6 of the *Rules*. Rule 5 states that, "[w]here, in any proceeding, a question of procedure arises to which these Rules do not provide an answer, or the answer they do provide is incomplete, the question shall be disposed of, consistently with such, if any, of these Rules as are applicable, in such a manner as the Tribunal directs." Rule 6 provides that "[t]he Tribunal may dispense with, vary or supplement any of these Rules if it is fair and equitable to do so or to provide for a more expeditious or informal process, as the circumstances and considerations of fairness permit."

27. Based on this discretionary authority, the Tribunal's normal practice in injury inquiries under section 42 of *SIMA* is to accept participants and evidence liberally. Contrary to P&P's assertion, persons who file notices of participation are typically not required to establish the nature of their interest before the Tribunal accepts their participation.

28. As the gatekeeper for the inquiry, it is open to the Tribunal to question the participation of a person who does not appear to fall within any of the categories set out in rule 2 of the *Rules*. However, it would likely only go so far as to deny the participation of a person in exceptional circumstances, such as persons who clearly do not fall within the parameters of rule 2 or whose participation would be frivolous or vexatious. That is not the case here.

29. Under rule 2 of the *Rules*, "interested party" is defined broadly to include "(*e*) any other person who, because their rights or pecuniary interests may be affected or for any other reason, is entitled to be heard by the Tribunal . . . ." Even if the Tribunal were to accept P&P's argument that Atlas and DFI do not have rights or pecuniary interests that may be affected by the outcome of this injury inquiry, paragraph 2(*e*) further states ". . . or for any other reason . . . ." The Tribunal is satisfied that this condition is met on the basis that Atlas and DFI have indicated that they will provide submissions and evidence that the Tribunal considers may be relevant or useful to the issues in this injury inquiry.

30. The Tribunal is interested in obtaining the best available evidence in order to determine whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury and such other matters as it may be required to determine under section 42 of *SIMA*. As part of its

13. R.S.C., 1985, c. 47 (4th Supp.).
14. It is also a well-established principle of common law that administrative tribunals are masters of their own procedure and not strictly bound by the rules of evidence, provided they follow the rules of natural justice. *Canadian National Ry. Co. v. Bell Telephone Co. of Canada*, [1939] S.C.R. 308, 1939 CanLII 34 (SCC).

analysis following the conclusion of the injury inquiry, the Tribunal will review each piece of evidence and give it the weight that it deserves.

31. The participation of a party that has relevant information may assist the Tribunal in testing the evidence provided by other parties and may help the Tribunal in arriving at a better, fully informed decision. The relevance and usefulness of Atlas's and DFI's participation and of the evidence to be provided by them will therefore be assessed by the Tribunal at the conclusion of the injury inquiry.

32. At this juncture, the Tribunal is not prepared to engage in any speculation regarding the relevance of any evidence that they may provide in this matter before the case fully unfolds and issues are identified through the analysis of the investigation report, submissions and evidence of the parties and other related matters, such as possible product exclusion requests.

33. In any event, the Tribunal expects all participants to endeavour to provide evidence that is relevant and to assist the Tribunal in obtaining the best evidence available by testing the evidence of parties opposing their interest.

34. For the reasons stated above, the Tribunal dismisses the request and accepts the participation of Atlas and DFI in these proceedings.

ORDER

35. The Tribunal dismisses the request.

Jean Bédard
Jean Bédard
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Ann Penner
Ann Penner
Member