



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
Friday, January 22, 2016*

*Reasons issued
Thursday, January 28, 2016*

*Corrigendum issued
Friday, February 26, 2016*

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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 notice of motion filed by Bri-Steel Manufacturing on December 21, 2015, under subrule 24(1) of the *Canadian International Trade Tribunal Rules*, for an order declaring that certain goods imported by Bri-Steel Manufacturing are not subject goods in relation to the inquiry.

ORDER

The Canadian International Trade Tribunal hereby dismisses the motion.

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.

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 notice of motion filed by Bri-Steel Manufacturing on December 21, 2015, under subrule 24(1) of the *Canadian International Trade Tribunal Rules*, for an order declaring that certain goods imported by Bri-Steel Manufacturing are not subject goods in relation to the inquiry.

CORRIGENDUM

In the first sentence of paragraph 23, the reference to “welded” should have been to “seamless”.

By order of the Tribunal,

Jean Bédard
Jean Bédard
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Ann Penner
Ann Penner
Member

STATEMENT OF REASONS

OVERVIEW

1. On December 21, 2015, Bri-Steel Manufacturing (Bri-Steel) filed a notice of motion with the Canadian International Trade Tribunal (the Tribunal) pursuant to subrule 24(1) of the *Canadian International Trade Tribunal Rules*¹ requesting an order declaring that certain goods imported by Bri-Steel are not goods subject to the this inquiry under section 42 of the *Special Import Measures Act*.² The reasons for the Tribunal's order dismissing the motion are stated below.

BACKGROUND

2. On August 28, 2015, following a complaint filed by Evraz Inc. NA Canada (Evraz) and Tenaris Global Services (Canada) Inc., Algoma Tubes Inc. and Prudential Steel ULC (collectively Tenaris Canada), the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping and subsidizing of certain carbon and alloy steel line pipe originating in or exported from the People's Republic of China (China) (the subject goods).

3. On August 31, 2015, the Tribunal issued a notice of commencement of preliminary injury inquiry.³ Bri-Steel, a domestic producer of line pipe, filed a submission opposing the complaint.

4. On October 27, 2015, the Tribunal made a preliminary determination pursuant to subsection 37.1(1) of *SIMA* that there was a reasonable indication that the dumping and subsidizing of the subject goods, with the exception of certain goods against which the preliminary injury inquiry was terminated, had caused or were threatening to cause injury to the domestic industry.⁴ The Tribunal, in the reasons for its preliminary determination, referred to information on the record that indicated that Bri-Steel was related to a Chinese producer of the subject goods and was an importer of the subject goods, and stated that this matter would need to be fully examined in the context of a final injury inquiry, as it relates to the issue of Bri-Steel's status in the domestic industry.⁵

5. On November 26, 2015, the CBSA notified the Tribunal of its preliminary determinations in respect of the dumping and subsidizing of the subject goods, which are defined as follows:⁶

carbon and alloy steel line pipe originating in or exported from the People's Republic of China, welded or seamless, having an outside diameter from 2.375 inches (60.3 mm) up to and including 24 inches (609.6 mm), including line pipe meeting or supplied to meet any one or several of API 5L, CSA Z245.1, ISO 3183, ASTM A333, ASTM A106, ASTM A53-B or their equivalents, in all grades, whether or not meeting specifications for other end uses (e.g. single-, dual-, or multiple-certified, for use in oil and gas, piling pipe, or other applications), and regardless of end finish (plain ends, beveled ends, threaded ends, or threaded and coupled ends), surface finish (coated or uncoated), wall thickness, or length, excluding galvanized line pipe and excluding stainless steel line pipe (containing 10.5 percent or more by weight of chromium), excluding goods covered by the Tribunal's finding in Inquiry No. NQ-2012-002 and goods covered by the Tribunal's order in Expiry Review No. RR-2012-003.

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1. S.O.R./91-499 [*Rules*].
 2. R.S.C., 1985, c. S-15 [*SIMA*].
 3. C. Gaz. 2015.I.2290.
 4. *Carbon and Alloy Steel Line Pipe* (27 October 2015), PI-2015-002 (CITT).
 5. *Ibid.* at paras. 69-70.
 6. Exhibit NQ-2015-002-01, Vol. 1 at 11.

6. For greater certainty, the product definition includes the following:⁷
- a) *unfinished line pipe (including pipe that may or may not already be tested, inspected and/or certified to line pipe specifications) originating in China and imported for use in the production or finishing of line pipe meeting final specifications, including outside diameter, grade, wall-thickness, length, end finish or surface finish; and*
 - b) non-prime and secondary pipes (“limited service products”).

[Emphasis added]

7. On November 27, 2015, the Tribunal initiated the present injury inquiry, pursuant to section 42 of *SIMA*, to determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic industry.

8. As stated above, Bri-Steel filed its notice of motion on December 21, 2015, during the investigation phase of the inquiry.

9. On December 23, 2015, in accordance with subrule 24(3) of the *Rules*, the Tribunal served Bri-Steel’s motion on counsel and parties of record.

10. On January 5, 2016, the Tribunal wrote to the CBSA seeking its views on Bri-Steel’s motion. Specifically, the Tribunal sought the views of the CBSA on two issues: (i) whether certain goods imported by Bri-Steel fall within the scope of the product definition of the subject goods provided by the CBSA and (ii) the point at which a tubular input or raw material becomes an “unfinished line pipe” product.

11. The Tribunal received submissions opposing the motion from Evraz on January 7, 2016, and from Tenaris Canada, Atlas Tube Canada ULC (Atlas) and DFI Corporation (DFI) on January 8, 2016.

12. Bri-Steel filed its reply comments on January 13, 2016.

13. On January 21, 2016, the Tribunal received a response from the CBSA stating its view that the goods imported by Bri-Steel, as described in the motion, fall within the definition of the subject goods and are considered by the CBSA to be “unfinished line pipe”.

POSITIONS OF PARTIES

Bri-Steel

14. Bri-Steel submitted that it imports seamless hollow shells, or “mother tubes”, that are used as raw material inputs in the production of unfinished and finished line pipe and that those mother tubes fall outside the scope of the subject goods. Specifically, Bri-Steel relied on the affidavit of Mr. Neil Rasmussen, President of Bri-Steel,⁸ and argued that a mother tube is an intermediate material at a stage of production that precedes that of an unfinished line pipe. According to Mr. Rasmussen, it is only after the mother tube has been heated and either stretch reduced or expanded that it becomes an unfinished line pipe, which would

7. As set out in the CBSA’s statement of reasons for the preliminary determinations. Exhibit NQ-2015-002-01A, Vol. 1 at 29; Exhibit PI-2015-002-05, Vol. 1Z at 54.

8. Exhibit NQ-2015-002-27 (protected), Vol. 2 at 37.

then undergo finishing operations as described in the CBSA's statement of reasons for the preliminary determinations.⁹

15. Bri-Steel argued that the term "unfinished line pipe" in the product definition is ambiguous and must be read in conjunction with the CBSA's statement of reasons, which provides further guidance on the steps by which "unfinished" line pipe becomes "line pipe". Bri-Steel submitted that, while the CBSA has exclusive jurisdiction to define the scope of the subject goods, it is well within the Tribunal's jurisdiction to ascertain that scope, particularly where there is an ambiguity, as a threshold issue in the injury inquiry.

16. In addition, Bri-Steel submitted that, if the Tribunal concludes that its imported mother tubes fall within the definition of the subject goods, then it will follow that any type of mother tube that could be used to produce line pipe imported from all other countries, including mother tubes imported by the domestic producers, must be included in the Tribunal's analysis of the volume of imports from non-subject countries.

Evrax and Tenaris Canada

17. Both Evrax and Tenaris Canada submitted that Bri-Steel's motion should be dismissed. In their view, Bri-Steel should have framed its request as a product exclusion request instead of what is essentially a motion for the Tribunal to make a subjectivity determination. Evrax and Tenaris Canada argued that it would be more appropriate for Bri-Steel to pursue this matter through the product exclusion request process since it would require Bri-Steel to provide more specific information including, *inter alia*, a detailed description of the particular characteristics of the product for which the exclusion is sought, product literature, physical characteristics, sizes, qualities, market segments, end uses, composition and chemical properties.

18. According to Evrax and Tenaris Canada, Mr. Rasmussen's affidavit failed to meet this evidentiary burden by glossing over a number of these characteristics in general terms and completely omitting others. Evrax and Tenaris Canada submitted that the lack of detail in relation to the specific products for which Bri-Steel seeks relief makes it impractical for them to assess the request or provide evidence in response. For instance, Tenaris Canada referred to additional information that was filed with the CBSA regarding importations by Bri-Steel, which is not on the Tribunal's record.¹⁰

19. Evrax and Tenaris Canada further argued that the CBSA has exclusive jurisdiction to define the subject goods and that the Tribunal is bound by the CBSA's definition as set out in its preliminary determinations. Moreover, Evrax and Tenaris Canada submitted that the CBSA has exclusive jurisdiction to make subjectivity determinations (i.e. enforcement decisions in relation to orders or findings under section 43 of *SIMA*), until an importer files an appeal with the Tribunal pursuant to subsection 61(1), at which point, the Tribunal's jurisdiction to determine subjectivity applies.

20. In addition, Evrax argued that the mother tubes imported by Bri-Steel fall within the definition of the subject goods. Specifically, Evrax argued that, if the meaning of the term "unfinished line pipe" was only intended to capture pipe that had been produced to the point of only needing "finishing" (as asserted by Bri-Steel), then the phrase "for use in the production or finishing" in the definition of the subject goods would be redundant. According to Evrax, such an interpretation would amount to an amendment of the CBSA's definition and would be made in breach of the Tribunal's jurisdiction in this inquiry.

9. *Ibid.*; Exhibit NQ-2015-002-01A, Vol. 1 at 32.

10. Exhibit NQ-2015-002-039, Vol. 1C at 65.

Atlas and DFI

21. Atlas and DFI submitted their support for Evraz's response to the motion and echoed its argument that Bri-Steel's motion is premature and should instead be framed as a product exclusion request. In particular, Atlas submitted that the references in the product definition to (1) goods "supplied to meet" listed specifications and (2) "unfinished" line pipe include any intermediate pipe product in any pre-finished form or state that is imported to be further processed for use as line pipe, regardless of any differences in the method by which the further processing is done.

Reply by Bri-Steel

22. In reply, Bri-Steel argued that its motion does not amount to an improper product exclusion request because there can be no product exclusion granted for goods that are not subject goods. Bri-Steel submitted that the parameters of a motion made pursuant to subrule 24(1) of the *Rules* are not determined by the Tribunal's *Guideline to Making Requests for Product Exclusions*. Bri-Steel further argued that the procedures for a subjectivity appeal under sections 56 to 61 of *SIMA* are irrelevant, as there is not yet a Tribunal injury or threat of injury finding in place, and that, therefore, there is nothing to appeal at this stage of the proceedings. In its view, ". . . the subjectivity of mother tubes is a threshold issue that needs to be resolved in order to ensure that the balance of the Tribunal's analysis is not irreversibly tainted."¹¹

23. Contrary to the claims of the parties opposed, Bri-Steel submitted that it has provided sufficient information about the mother tubes that it imports in order to clearly demonstrate that they are a raw material used to produce welded line pipe. It argued that, if Evraz's interpretation of the term "unfinished line pipe" is correct, then any raw material "for use in the production" of line pipe would be unfinished line pipe, which would significantly broaden the scope of the subject goods in this injury inquiry.

24. Finally, Bri-Steel requested that the Tribunal strike from the record a confidential exhibit that was attached to the submission filed by Tenaris Canada in response to the motion.¹² Bri-Steel submitted that the exhibit in question was unsupported by any affidavit and amounts to counsel for Tenaris Canada improperly giving evidence.

ANALYSIS

25. It is well established that the Tribunal must conduct its injury inquiry under section 42 of *SIMA* in accordance with the definition of the subject goods provided by the CBSA.¹³

26. Where the Tribunal has difficulty in ascertaining the exact scope of the goods to which the CBSA's preliminary determinations apply or where it finds that there is an ambiguity in the product definition of the subject goods provided by the CBSA, the Tribunal may interpret or seek clarification of the meaning of certain words in the definition, as long as it does not amount to a redefinition of the subject goods.¹⁴

11. Exhibit NQ-2015-002-43, Vol. 1C at 91.

12. Exhibit NQ-2015-002-40 (protected), Vol. 2.

13. The Federal Court of Appeal, in *Canada (Deputy Minister of National Revenue, Customs and Excise – M.N.R.) v. General Electric Canada Inc.*, [1994] F.C.J. No. 847 (FCA) at para. 9, stated that "[i]t is well established that the Appellant has the sole jurisdiction to define the 'goods' for the injury inquiry to be undertaken by the CITT." *Mitsui and Co. v. Buchanan*, [1972] F.C. 944; *Sarco Canada Limited v. Anti-dumping Tribunal*, [1979] 1 F.C. 247; *Japan Electrical Manufacturers Association v. Anti-dumping Tribunal*, [1982] 2 F.C. 816.

14. *DeVilbiss (Canada) Ltd. v. Canada (Anti-dumping Tribunal)*, [1983] 1 F.C. 706; *Pup Joints* (10 April 2012), NQ-2011-001 (CITT) at para. 69; *Bicycles and Frames*, procedural order (3 July 1997), RR-97-003 (CITT).

27. In the present case, a plain reading of the product definition indicates that the term “unfinished line pipe” has a broad meaning, in that it includes goods that are imported “. . . for use in the production *or* finishing of line pipe meeting final specifications . . .” [emphasis added]. This includes “. . . pipe that may or may not already be tested, inspected and/or certified to line pipe specifications . . .” Therefore, this definition covers more than unfinished line pipe that has been produced to the point of only needing “finishing”, which is described in the CBSA’s statement of reasons for its preliminary determinations as including bevelling, cooling, straightening, facing, testing, coating or bundling and could include threading or coupling.¹⁵ The inclusion of the term “for use in the production” indicates that “unfinished line pipe” also covers tubular inputs at earlier stages of the line pipe production process.

28. In light of Bri-Steel’s position that its imported mother tubes are raw materials that fall outside the scope of the subject goods, the Tribunal wrote to the CBSA asking it to clarify the point at which, during the production process, a raw material or tubular input becomes an “unfinished line pipe” product and to provide its views on whether the goods imported by Bri-Steel fall within the definition of the subject goods.

29. The CBSA provided the following response:¹⁶

It is the CBSA’s view that the goods imported by Bri-Steel, as described in the motion filed by Bri-Steel with the CITT, fall within the scope of the product definition in NQ-2015-002. More specifically, these goods are considered to be unfinished line pipe.

The primary raw material of the goods imported by Bri-Steel is steel billet. It is the view of the CBSA that steel billet becomes unfinished line pipe after the first step of production to convert it into finished line pipe. Bri-Steel indicated in its motion that the goods it imports have been subject to the formation of a central cavity in the steel billet as the first step in converting the steel billet into finished line pipe; as such, the product they import is considered by the CBSA to be unfinished line pipe.

30. As indicated above, the CBSA’s response was based on information provided in the motion filed by Bri-Steel. The Tribunal considers the CBSA’s opinion to be instructive in clarifying the scope of the product definition set out in the CBSA’s preliminary determinations. Furthermore, in the Tribunal’s view, the CBSA has provided a reasonable explanation that is consistent with a plain reading of the product definition.

31. In light of the clarification provided by the CBSA, and following independent consideration of the evidence on file, the Tribunal is satisfied that, for the purposes of its injury inquiry, the mother tubes imported by Bri-Steel fall within the scope of the product definition. The Tribunal sees no reason to deviate from those views at this stage of the proceedings.

32. Furthermore, the other known domestic producers of line pipe, Tenaris Canada and Evraz, have confirmed that they do not use imported tubes (whether imported from related or unrelated firms or purchased from other sources) in the production of line pipe in Canada.¹⁷ Accordingly, there is no indication that any imports of tubular inputs, other than those imported by Bri-Steel, are missing from the Tribunal’s record.

33. Whether the views expressed by the CBSA would withstand the full scrutiny of a subjectivity appeal under section 61 of *SIMA*, in the event of a positive finding by the Tribunal, is not a matter on which the Tribunal can opine in the context of the present inquiry. As stated above, the CBSA has the exclusive jurisdiction to determine, at the time of importation, whether goods are subject to the Tribunal’s findings or orders under *SIMA*. Should an importer disagree with the CBSA’s application of anti-dumping or

15. Exhibit NQ-2015-002-01A, Vol. 1 at 32.

16. Exhibit NQ-2015-002-50, Vol. 1C at 139.

17. Exhibit NQ-2015-002-24.02, Vol. 1A at 57; Exhibit NQ-2015-002-24.03, Vol. 1A at 62.

countervailing duties at the time of importation, the importer must follow the appeal process set out under sections 56 to 61.

34. Bri-Steel's motion is essentially asking the Tribunal to conduct such a subjectivity appeal in a summary manner, at the outset of its inquiry, even though the CBSA has the sole authority to define the scope of the subject goods for the purposes of the Tribunal's injury inquiry and despite the fact that the CBSA considers the goods imported by Bri-Steel to fall within the definition of the subject goods.¹⁸

35. It would be inappropriate for the Tribunal to conduct, in the proposed manner, what amounts to a subjectivity assessment in the context of the present inquiry under section 42 of *SIMA*. Such a process would necessarily involve the full participation of the CBSA and perhaps other interested parties, as interveners, and would have to allow for a hearing at which the evidence could be tested before the Tribunal. Such proceedings would not only go beyond the Tribunal's jurisdiction in the present inquiry but also create a significant additional burden on all parties in the midst of the full inquiry process that is currently ongoing and governed by strict legislated time frames. In addition to the procedural fairness concerns that proceeding in this manner would raise with respect to all parties, it also creates an unnecessary distraction from the focus of the injury inquiry.

36. For the reasons stated above, the Tribunal dismisses the motion.

37. In addition, the Tribunal hereby denies Bri-Steel's request to strike from the record the confidential exhibit that was attached to the submission filed by Tenaris Canada in response to the motion. The Tribunal's long-standing practice in injury inquiries under section 42 of *SIMA* is to accept evidence liberally, subject to being tested by the parties opposed, and, ultimately, the Tribunal will decide the relevance and weight to be given to the evidence before it. The Tribunal sees no reason to deviate from that approach in this instance.

ORDER

38. The motion is dismissed.

Jean Bédard
Jean Bédard
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Ann Penner
Ann Penner
Member

18. The Tribunal notes that the CBSA's views with respect to Bri-Steel's imports remain consistent with its stance during the preliminary stage of the investigations. Exhibit PI-2015-002-03.02, Vol. 2D (protected) at 13; Exhibit PI-2015-002-03.02, Vol. 1Z at 59; Exhibit NQ-2015-002-02, Vol. 2 (protected) at 2.