



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Request for Importer Ruling
MP-2021-001

Oil Country Tubular Goods

*Order and reasons issued
Wednesday, November 10, 2021*

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IN THE MATTER OF a request made to the Canadian International Trade Tribunal by the President of the Canada Border Services Agency under subsection 89(1) of the *Special Import Measures Act*, for a ruling on who is the importer in Canada of certain oil country tubular goods that are subject to the Tribunal's finding issued on April 2, 2015, in Inquiry No. NQ-2014-002, and its subsequent order issued on December 30, 2020, in Expiry Review No. RR-2019-006;

AND IN THE MATTER OF Evraz Inc. NA Canada's and Welded Tube of Canada Corp.'s notices of intent to participate as parties in the matter noted above.

ORDER

The Canadian International Trade Tribunal finds that Evraz Inc. NA Canada and Welded Tube of Canada Corp. do not have standing to participate as parties in the matter noted above.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

Peter Burn

Peter Burn
Member

Georges Bujold

Georges Bujold
Member

STATEMENT OF REASONS

BACKGROUND

[1] The President of the Canada Border Services Agency (CBSA) has requested the Canadian International Trade Tribunal to rule, pursuant to subsection 89(1) of the *Special Import Measures Act*,¹ on who is the importer in Canada of specific imports of oil country tubular goods that are subject to the Tribunal's finding issued on April 2, 2015, in Inquiry No. NQ-2014-002,² and its subsequent order issued on December 30, 2020, in Expiry Review No. RR-2019-006.³

[2] The Tribunal's notice regarding the CBSA's request for a ruling is set out in the *Canada Gazette*.⁴ The Tribunal received notices of intent to participate as parties from Evraz Inc. NA Canada (Evraz) and Welded Tube of Canada Corp. (Welded Tube).

[3] The Tribunal asked Evraz and Welded Tube to explain the legal basis for their proposed participation. In response, Evraz and Welded Tube filed a joint submission with the Tribunal. The Tribunal permitted the CBSA and the other party to the proceeding to comment on that submission.⁵

POSITIONS OF THE PROPOSED PARTICIPANTS AND PARTIES

[4] Evraz and Welded Tube submit that they have a statutory right to participate in this proceeding under section 89 of *SIMA* (hereinafter section 89 proceeding). Citing subsection 89(1), they state that "[t]he determination of 'who is the importer' may be made 'at the request of any person interested in the importation of the goods'."⁶ Evraz and Welded Tube argue that, as domestic producers of like goods to the subject goods in *OCTG2 Review*,⁷ they are each "a person interested in the question as to which of two or more persons is the importer in Canada where that question arises under the Act",⁸ pursuant to paragraph 41(c) and section 42 of the *Special Import Measures Regulations*.⁹ They also submit that subparagraphs 76(1)(f)(ii) and (iii) of the *Canadian International Trade Tribunal Rules*¹⁰ contemplate the participation of an "interested person" in a section 89

¹ R.S.C., 1985, c. S-15 [*SIMA*].

² *Oil Country Tubular Goods* (2 April 2015), NQ-2014-002 (CITT).

³ *Oil Country Tubular Goods* (30 December 2020), RR-2019-006 (CITT) [*OCTG2 Review*].

⁴ C. Gaz. 2021.I.4775-4776.

⁵ At this stage, the name of the other party and its interest in this matter appear to constitute confidential information. Out of an abundance of caution, it will hereinafter be referred to as a party.

⁶ Exhibit MP-2021-001-05 at 1-2.

⁷ See *OCTG2 Review* at para. 39, where the Tribunal found that Evraz and Welded Tube were domestic producers of like goods during the period of review.

⁸ Exhibit MP-2021-001-05 at 2.

⁹ SOR/84-927 [*Regulations*]. The relevant parts of sections 41 and 42 are as follows: "41 . . . person interested means . . . (c) a person who is engaged in the production, purchase or sale of any goods produced in Canada that are like goods in relation to any goods that are the subject of an investigation . . ." and "42 For the purposes of subsection 89(1) . . . a person referred to in paragraphs 41(a) to (c) of these Regulations is a person interested in the question as to which of two or more persons is the importer in Canada where that question arises under the Act."

¹⁰ SOR/91-499 [*Rules*]. Subparagraphs 76(1)(f)(ii) and (iii) provide that "[i]mmediately after the list referred to in paragraph 75(b) is filed with the Tribunal, the Tribunal must cause to be published in the Canada Gazette a notice of request for a ruling setting out the following information: . . . (f) where the Tribunal has directed that a hearing be held, the following information, namely, . . . (ii) the date on or before which an interested person must file with the Tribunal a notice of participation, and (iii) the date on or before which counsel for a person who files a notice of participation must file with the Tribunal a notice of representation and, if appropriate, a declaration and undertaking referred to in subrule 16(1)."

proceeding. Evraz and Welded Tube submit that therefore, “interested persons may file notices of participation with the Tribunal to participate in any hearing held pursuant to a section 89 proceeding.”

[5] Evraz and Welded Tube further submit that if they have standing to initiate a section 89 proceeding, they likewise have standing to participate in such a proceeding as initiated by the CBSA or any other party.

[6] The Tribunal considered a party’s opposing submission. The party submits that while subsection 89(1) of *SIMA* allows a “person interested” to ask the CBSA to request the Tribunal for a ruling, this subsection does not provide a direct right of petition to the Tribunal. The party notes that in this case, there is no evidence the CBSA requested a ruling at Evraz or Welded Tube’s request, and Evraz and Welded Tube do not claim they were notified by the CBSA pursuant to subparagraph 75(a)(ii) of the *Rules*.¹¹ The party argues that the object of this proceeding is for the Tribunal to decide whether the CBSA is correct in determining that a particular party (e.g. not Evraz) is, in fact, the importer of the goods at issue. The party also submits that the Tribunal does not require Evraz’s assistance to decide what is a factual issue.¹²

ANALYSIS

[7] Participation as a party in a Tribunal section 89 proceeding is subject to several conditions specifically provided for in the *Rules*.

[8] Rule 2 of the *Rules* defines the term “party”, in relevant part, as “. . . (b) in the case of a proceeding under section 89 . . . a person to whom notice has been sent under subrule 76(2) . . . if the person has (i) filed a notice of participation in accordance with these Rules, or (ii) if no hearing is to be held in the proceeding, made a written submission to the Tribunal.” Therefore, the threshold condition to participate as a party in a section 89 proceeding is to be a person who has received notice under subrule 76(2) of the *Rules*.

[9] Subrule 76(2) of the *Rules* states that the “Tribunal shall send a copy of a notice of request for a ruling to the following persons: (a) the President; and (b) each person shown on the list referred to in paragraph 75(b).”

[10] Paragraph 75(b) of the *Rules* provides that where the CBSA requests a ruling under subsection 89(1) of *SIMA*, it “shall file with the Tribunal a list of the names, addresses for service, telephone numbers and fax numbers, if any, of the persons given notice pursuant to paragraph (a).”

[11] Paragraph 75(a) of the *Rules* provides that where the CBSA requests a ruling under subsection 89(1) of *SIMA*, it “shall give notice of the request to (i) each of the two or more persons referred to in that subsection, (ii) if the President made the request at the request of a person interested in the importation of the goods referred to in that subsection, that person interested, and (iii) each exporter to Canada of those goods.”

¹¹ Subparagraph 75(a)(ii) requires the CBSA to give notice of its request for a ruling to a “person interested” who asked the CBSA to request the Tribunal to make the ruling.

¹² The party submitted additional arguments regarding: (i) Evraz and Welded Tube’s argument that they should be permitted to participate because the Tribunal’s ruling in this matter could affect the assessment and/or enforcement of existing anti-dumping duties; (ii) potential unnecessary complication of the proceeding and increased costs of participation; and (iii) whether Evraz and Welded Tube should be permitted to participate in this matter as interveners.

[12] The CBSA filed with the Tribunal a list of the names, addresses for service, telephone numbers, and fax numbers of persons it notified of the request for a ruling.¹³ Specifically, the CBSA gave notice to the two or more persons who may be the importer in Canada of the goods at issue and the exporter of those goods. Therefore, the CBSA filed the required information in accordance with paragraph 75(b) of the *Rules*. Pursuant to subrule 76(2), the Tribunal sent its notice of the CBSA's request for a ruling to the same persons.

[13] Domestic producers of like goods who benefit from an applicable Tribunal finding or order are not mentioned in subparagraphs 75(a)(i) or (iii), paragraph 75(b), or in subrule 76(2) of the *Rules*. Furthermore, subparagraph 75(a)(ii) is not relevant to this proceeding because it only applies where a "person interested" in the importation of the goods at issue has requested and thereby triggered the CBSA's request for a ruling under subsection 89(1) of *SIMA*. The CBSA's request for a ruling in this matter was on its own initiative, not at the request of a "person interested".

[14] Consequently, pursuant to subrule 76(2) of the *Rules*, the Tribunal was not required to, and did not, send a copy of its notice to Evraz and Welded Tube. In the absence of the Tribunal sending them its notice, Evraz and Welded Tube do not meet the definition of a party under rule 2. Therefore, neither Evraz nor Welded Tube has satisfied the threshold condition for participating as a party in a section 89 proceeding.

[15] The Tribunal considered Evraz and Welded Tube's argument that, for the purposes of subsection 89(1) of *SIMA*, they are each a "person interested" as defined in section 42 (with reference to paragraph 41(c)) of the *Regulations*. The definition of "person interested" at paragraph 41(c) includes persons engaged in the production or sale of like goods in relation to any goods that are the subject of an investigation.

[16] However, subsection 89(1) of *SIMA* does not provide a "person interested" with an automatic right to participate in all section 89 proceedings. Rather, subsection 89(1) permits a "person interested" to ask the CBSA to request a ruling.

[17] Furthermore, while subparagraph 76(1)(f)(ii) of the *Rules* expressly references an "interested person", it is in the context of prescribing information the Tribunal must set out in its notice of request for a ruling to be published in the *Canada Gazette*. This subparagraph neither prescribes nor extends an automatic right of participation as a party for "interested persons".

[18] The Tribunal has also considered Evraz and Welded Tube's argument that if they have standing to request a section 89 proceeding, they likewise have standing to participate in such a proceeding initiated by the CBSA or any other party. However, this position is inconsistent with the precise definition of "party" in the *Rules*.

[19] Finally, Evraz and Welded Tube have not demonstrated how their participation in this proceeding would assist the Tribunal in determining the issue of who is the importer of specific goods imported pursuant to a particular transaction between specific persons. Evraz and Welded Tube are not privy to the specific commercial circumstances which are at issue in this proceeding. Furthermore, Evraz and Welded Tube's general contention that section 89 proceedings could affect the ultimate assessment of anti-dumping duties and the effectiveness of existing anti-dumping protection is, in the narrow circumstances at issue, entirely speculative.

¹³ Letter to the Tribunal from the CBSA dated August 4, 2021.

[20] The Tribunal's findings in this matter are consistent with its previous findings in similar circumstances.¹⁴ An industry association of domestic producers first submitted a notice of participation in a section 89 proceeding, then later sought to participate as an intervener. The Tribunal noted the association's active involvement in the Tribunal's related injury inquiries under *SIMA*, and in other related matters.¹⁵ Ultimately, the Tribunal found that the *Rules* did not provide for any person to intervene in a section 89 proceeding. Additionally, the Tribunal noted that the *Rules* did not provide for the association to become a party.

CONCLUSION

[21] For the reasons above, the Tribunal finds that Evraz and Welded Tube do not have standing to participate as parties in this matter.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

Peter Burn

Peter Burn
Member

Georges Bujold

Georges Bujold
Member

¹⁴ *Bicycles* (5 April 2004), MP-2003-001 (CITT) at 1 (para. 2).

¹⁵ Letter from the Tribunal to the association dated September 11, 2003.