Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

RULING AND REASONS

Ruling Request MP-2021-001

Oil Country Tubular Goods

Ruling and reasons issued
Tuesday, June 14, 2022

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IN THE MATTER OF a request made pursuant to subsection 89(1) of the *Special Import Measures Act* for a ruling on the question of who is the importer in Canada of:

OIL COUNTRY TUBULAR GOODS

RULING

The Canadian International Trade Tribunal, in response to a request by the President of the Canada Border Services Agency made pursuant to subsection 89(1) of the *Special Import Measures Act* (SIMA), has considered which of two entities is the importer in Canada of certain oil country tubular goods. The Tribunal rules, pursuant to section 90 of SIMA, that "S" is the importer in Canada of the goods.

Randolph W. Heggart
Randolph W. Heggart
Presiding Member

Georges Bujold
Georges Bujold
Member

Peter Burn
Peter Burn
Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	February 17, 2022
Tribunal Panel:	Randolph W. Heggart, Presiding Member Georges Bujold, Member Peter Burn, Member
Tribunal Secretariat Staff:	Kirsten Goodwin, Counsel Stephanie Blondeau, Registrar Officer

PARTICIPANTS:

	Counsel/Representatives
Canada Border Services Agency	Blake Van Santen Charles Maher
Jindal SAW Limited	Peter Clark Barry Desormeaux

WITNESS:

Vikas Jhunthra
Jindal SAW Limited

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STATEMENT OF REASONS

INTRODUCTION

[1] The President of the Canada Border Services Agency (CBSA) has requested, pursuant to subsection 89(1) of the *Special Import Measures Act* (SIMA),[1] a ruling from the Canadian International Trade Tribunal on who is the importer in Canada of certain oil country tubular goods (OCTG) that are subject to the Tribunal's finding issued on April 2, 2015, in inquiry NQ-2014-002,[2] and subsequent order issued on December 30, 2020, in expiry review RR-2019-006.[3]

[2] The OCTG were imported into Canada by the non-resident importer of record, Jindal SAW Limited (JSL).[4] The OCTG were purchased by "S", a company located in Canada.[5]

[3] Pursuant to section 90 of SIMA and for the reasons that follow, the Tribunal rules that "S" is the importer in Canada.

BACKGROUND

[4] This matter arises in respect of 18 bundles of OCTG imported into Canada.[6] JSL manufactured the OCTG at its facility in Maharashtra, India.[7] JSL is the exporter of record,[8] the non-resident importer of record,[9] and the vendor.[10] JSL sold the OCTG to "S".[11] The OCTG were subject to anti-dumping duties.[12] JSL paid the duties, then submitted an adjustment request to the CBSA seeking a full refund of the duties.[13] On June 14, 2021, the CBSA initiated a normal value review.

[5] On August 18, 2021, the Tribunal received the CBSA's public request to rule on whether JSL or "S" is the importer in Canada. The Tribunal's public notice of the CBSA's request advised persons and governments seeking to participate as a party in the proceeding to file a notice of participation with the Tribunal.[14] On November 10, 2021, the Tribunal issued an order, finding that Evraz Inc. NA

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1 R.S.C., 1985, c. S-15.
2 *Oil Country Tubular Goods* (18 June 2015), NQ-2014-002 (CITT) [*OCTG 2015*].
3 *Oil Country Tubular Goods* (30 December 2020), RR-2019-006 (CITT) [*OCTG 2020*].
4 Exhibit MP-2021-001-01A at 1.
5 The purchaser's name is confidential information. The parties jointly decided to refer to the purchaser as "S" (*Transcript of Public Hearing* at 23).
6 Exhibit MP-2021-001-01A at 1.
7 Exhibit MP-2021-001-B-01 at para. 32.
8 *Ibid.* at para. 5.
9 *Ibid.* at para. 4.
10 Exhibit MP-2021-001-B-03.
11 *Transcript of Public Hearing* at 23.
12 The duties were imposed pursuant to the Tribunal's inquiry finding in *OCTG 2015* and expiry review order continuing the finding in *OCTG 2020*.
13 Exhibit MP-2021-001-01A at 1; Exhibit MP-2021-001-B-03 at para. 9.
14 The notice was published on the Tribunal's website, online: <https://decisions.citt-tcce.gc.ca/citt-tcce/ra/en/item/18436/index.do>, and in the September 4, 2021, issue of Part I of the *Canada Gazette*, C. Gaz. 2021.I.4775.

Canada and Welded Tube of Canada Corp. did not have standing to participate as parties.[15] Consequently, the parties to the proceeding are the CBSA and JSL.

[6] The Tribunal received JSL's case brief on December 3, 2021, and the CBSA's case brief on December 16, 2021. By letter dated December 30, 2021, the Tribunal asked the parties for their views on holding a public hearing. The CBSA responded that a hearing was unnecessary because the parties' written submissions provided a sufficient basis for determining the matter. JSL responded that a hearing should be held to allow JSL to respond to the CBSA's case brief, to permit the examination of JSL's witness, and to reflect the fact that this unique type of matter arises infrequently under SIMA. The Tribunal decided that a public hearing was required; the Notice of Request for a Ruling was revised accordingly.

[7] The Tribunal held a videoconference hearing, with public and *in camera* testimony, on February 17, 2022.

LEGAL FRAMEWORK

[8] The CBSA's request for a ruling is based on subsection 89(1) of SIMA, which states in relevant part:

Request for ruling on who is importer in Canada	**Demande**
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 President 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 . . .	**89 (1)** Si, pour l'application de la présente loi, il faut déterminer qui est l'importateur de marchandises qui ont été ou seront importées et sur lesquelles des droits sont exigibles ou ont été versés ou seront exigibles si les marchandises sont importées, le président peut, de sa propre initiative, ou doit, à la demande de toute personne intéressée, saisir le Tribunal de la question [...]

[9] The Tribunal must make its ruling pursuant to section 90 of SIMA, which states in relevant part:

Tribunal's ruling	**Décision du Tribunal**
90 Where a request is made to the Tribunal under subsection 89(1) for a ruling on the question referred to therein, the Tribunal	**90** Dans les cas où il est saisi de la demande visée au paragraphe 89(1), le Tribunal :
(a) shall arrive at its ruling on the question by determining which of the	**a)** détermine qui est l'importateur; [...]

15 *Oil Country Tubular Goods* (10 November 2021), MP-2021-001 (CITT).

> two or more persons is the importer in Canada of the goods; . . .

[10] Subsection 2(1) of SIMA provides that "***importer***, in relation to any goods, means the person who is in reality the importer of the goods" and "***importateur*** La personne qui est le véritable importateur des marchandises." SIMA does not define the term "importer in Canada".

[11] To make its ruling, the Tribunal must interpret SIMA provisions. The Federal Court of Appeal recently summarized the principles of statutory interpretation.[16] Specifically, the words in a statute must be read in their context and in their grammatical and ordinary sense in a manner that is harmonious with the statute's scheme and object and the intention of Parliament.[17] Where there is a discrepancy between the English and French versions of a statute, bilingual statutory interpretation principles also apply.[18] Section 13 of the *Official Languages Act* provides that each official language version of a statutory provision is equally authoritative.[19] This means that, if the English and French versions of a provision appear to state different things, neither version automatically has priority.[20]

[12] The Tribunal recognizes the difference between the English and French versions of sections 89 and 90 of SIMA. The former refers to "the importer in Canada", while the latter refers only to "l'importateur" without qualification. The contextual backdrop for sections 89 and 90 is the need to properly identify who is liable for paying applicable duties as imposed, for example, under sections 8 or 11 of SIMA.[21] The English version of sections 8 and 11 imposes liability for the payment of duties on "the importer in Canada"; the French version mirrors the English by imposing such liability on "l'importateur *au Canada*" [emphasis added]. As previously confirmed by the Tribunal,[22] SIMA's general scheme is to discourage the "mischief of dumping", and SIMA's object is to protect Canadian producers from injury caused by dumped imports. Therefore, in accordance with statutory interpretation principles and previous Tribunal rulings, and as reflected in the parties' submissions in this proceeding, the Tribunal will rule on who the "importer in Canada" is.

[13] The Tribunal acknowledges JSL's submission that, if there are two versions of a statutory provision, then "the taxpayer" is entitled to adopt the version most favourable to its position. However, to the extent that JSL may be relying on taxation-related jurisprudence, the presumption in favour of the taxpayer is residual and only applies in an exceptional situation where ordinary

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16 *Canada (Attorney General) v. Burke*, 2022 FCA 44 [*Burke*] at paras. 31–33.

17 *Burke* at para. 32, citing *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at para. 10 (citing *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804 at para. 50).

18 See, for example, *Amcor Flexibles Capsules Canada Inc. v. President of the Canada Border Services Agency* (2 November 2021), AP-2020-023 (CITT) [*Amcor*] at para. 46, citing *Great West Van Conversions Inc. v. President of the Canada Border Services Agency* (30 November 2011), AP-2010-037 (CITT) [*Great West Van Conversions*]; *R. v. Daoust*, 2004 SCC 6 at paras. 27–30; *R. v. Quesnelle*, 2014 SCC 46 at para. 53; *Schreiber v. Canada (Attorney General)*, 2002 SCC 62 at para. 56.

19 R.S.C., 1985, c. 31 (4th Supp.).

20 *Amcor* at para. 46, citing *Great West Van Conversions*.

21 *Bicycles* (11 March 2004), MP-2003-001 (CITT) [*Bicycles*] at 6.

22 *Fresh Garlic Originating in or Exported from The People's Republic of China* (4 September 1998), MP-97-001 (CITT) [*Garlic*] at 5; *Landmark Trade Services v. President of the Canada Border Services Agency* (13 January 2020), AP-2019-002 (CITT) [*Landmark*] at para. 41, citing *Certain Artificial Graphite Electrodes and Connecting Pins Originating in or Exported from the United States of America* (1 May 1987), IR-2-86 (C.I.T.) [*Artificial Graphite Electrodes*].

principles of interpretation do not resolve the issue.[23] Even if one presumes for the purposes of the analysis that taxation jurisprudence should guide the Tribunal's interpretation of sections 89 and 90 of SIMA, ordinary principles of statutory interpretation resolve the interpretative issue in this case, making the presumption inapplicable.

ANALYSIS

[14] The Tribunal will follow a two-step analysis to determine whether JSL or "S" is the importer in Canada. First, it considers which party is "in reality the importer" of the OCTG. Then it considers whether that party is "in Canada". This approach is consistent with the Tribunal's past practice.[24]

Which of JSL and "S" is in reality the importer?

Positions of the parties

[15] The CBSA submits that "S" is the importer because, regardless of the party named on a customs declaration, pursuant to subsection 2(1) of SIMA, the importer is the person who is the importer in the true sense of the word. According to the CBSA, JSL's identification on import documentation as the importer of record is not determinative of whether it is in reality the importer of the OCTG. The CBSA argues that "S" starting to pay the duties in later transactions with JSL, after the shipment at issue, is further evidence that "S" is in reality the importer.

[16] Citing *Bicycles*, the CBSA asserts that there are several factors demonstrating that a Canadian purchaser is *not* in reality the importer. One factor is where a purchaser does not directly trigger the importation process (because its purchase order is issued to a third-party intermediary who then issues its own purchase order to the foreign manufacturer). A second is where the purchaser has no control over the imported goods' country of origin or manufacturing process. A third factor is where the purchaser does not bear any of the risks associated with being an importer, such as those associated with exchange rate fluctuations and delivery.

[17] The CBSA argues that consideration of those factors in this case reveals that the purchaser "S" is in reality the importer. Regarding the first factor, the CBSA submits that, unlike the purchaser in *Bicycles* who was not found to be the importer, "S" triggered the importation process (including the goods' manufacture and shipment to Canada) by issuing a purchase order directly to the foreign manufacturer JSL. There was no third-party intermediary between the purchaser "S" and the foreign manufacturer JSL. To support its position, the CBSA points to a purchase order listing "S" as the "sell to" and "ship to" customer and JSL as the vendor, as well as two mill test certificates identifying JSL as the foreign manufacturer and "S" as its direct customer.

[18] Regarding the second factor, the CBSA argues that "S" had significant control over the goods' country of origin because it selected and dealt directly with the foreign manufacturer. The CBSA also asserts that control by "S" over the manufacturing process is evidenced by the product specifications stated in the purchase order issued by "S".

[19] Regarding the third factor, the CBSA submits that "S" bore risks inherent to being an importer. The CBSA asserts that the purchase order terms requiring payment in United States (U.S.)

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23 *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20 at para. 24.

24 See, for example, *Bicycles* at 6.

currency show that "S" assumed the risk of any adverse movement in the exchange rate of the Canadian dollar relative to the U.S. dollar up to the time of payment. The CBSA acknowledges that JSL also assumed the risk of exchange rate fluctuations by selling in U.S. currency rather than India's currency, but it argues that this only reflects the reality of being an exporter engaged in international trade. In terms of the risks associated with delivery, the CBSA submits that "S" assumed the entirety of delivery risk within Canada, because it took ownership of the goods upon their release from customs at the port of entry and bore full responsibility for shipping the goods from that point onward.

[20] JSL asserts that, as the importer of record, it is the "importer" for SIMA purposes. JSL submits that it was responsible for international transportation of the goods and assumed the risks associated with delivery such as marine transportation. JSL also submits that it bore the risk of currency exchange rate fluctuations. JSL further submits that it hired a customs broker, paid the applicable SIMA duties, collected and remitted GST, and fully participated in the transaction at issue.

[21] JSL explains that the arrangements between JSL and "S" were undertaken for good business reasons to accommodate "S" while normal values were being obtained on an import, pay and appeal basis, as per the CBSA's system for issuing new normal values. JSL submits that it was only a temporary practice. In any event, there was no risk of under-collection of anti-dumping duties, and JSL would never sell to anybody at less than normal value. Moreover, there was no attempt to hide the nature of the transaction between JSL and "S". JSL further submits that it is "not unusual for importers to seek to avoid direct participation of importation, i.e. being an Importer of Record, to avoid dealing with the enforcers".[25]

Analysis

[22] The Tribunal's starting point is the definition of "importer" in subsection 2(1) of SIMA, which reads: "importer, in relation to any goods, means the person who is in reality the importer of the goods".[26] The words "importer" and "reality" are particularly important to the Tribunal's analysis. The ordinary meaning of "importer" is "[a] person or entity that brings goods into a country from a foreign country and pays customs duties".[27] The Tribunal has previously found that such dictionary definitions indicate that "the importer is the person or entity that brings or acts to bring goods into a country."[28] The ordinary meaning of "reality" is "what exists or is real; that which underlies appearances . . . the real nature or truth of (a thing)."[29]

[23] "Importer" and "reality" must also be read in context, consistent with the object and scheme of SIMA. SIMA is concerned with imposing anti-dumping duties to discourage the importation of dumped goods. Therefore, substance is more important than form, which requires the Tribunal to

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25 The Tribunal notes that JSL also appeared to suggest that the OCTG in issue should not be subject to duties at all. However, this question is outside the scope of a request for a ruling on who the importer in Canada is, pursuant to subsection 89(1) of SIMA.

26 The French version reads "***importateur*** La personne qui est le véritable importateur des marchandises".

27 *Black's Law Dictionary*. The *Larousse* dictionary defines the "importateur" (*importer*) as "qui fait des importations" (*one who imports*) and "importation" (*import*) as "action d'importer, de faire entrer dans un pays des produits soumis ou non aux tarifs douaniers; action de faire entrer dans un pays un usage, un produit, etc." (*the act of importing, of bringing goods into a country, whether or not they are subject to customs duties; the act of bringing into a country a custom, a product, etc.*).

28 *Landmark* at para. 49.

29 *Canadian Oxford Dictionary*, 2nd ed., *s.v.* "reality".

look beyond an importer of record designation on customs documents.[30] An entity's business number on a customs form alone is insufficient to establish that it is in reality the importer; the Tribunal has previously stated that to make this determination it should consider "the totality of the matter".[31]

[24] In its consideration of the totality of the matter in prior cases, the Tribunal has identified certain factors indicating that an entity was in reality the importer.[32] The Tribunal has also previously identified factors indicating that an entity was *not* in reality the importer.[33] Such factors reflected the particular circumstances of each prior case. However, none of these factors are necessarily determinative. The Tribunal's task is to review all the evidence before it and determine, in the circumstances surrounding the specific transaction in issue, which factor should be given more weight. In this case, the Tribunal finds that it is "S", not JSL, that acted in reality as an importer or exhibited the qualities of an importer.

[25] Specifically, in the circumstances of this case, the Tribunal identifies a number of key factors that support a determination that "S" is the true importer for the purposes of sections 89 and 90 of SIMA. First, "S" issued the purchase order(s) for the goods in issue to the foreign manufacturer, thereby triggering the manufacture and shipping of the goods.

[26] Second, "S" had control over the goods' country of origin and directed the manufacturing process. Although JSL submits that there was no question about different possible countries of origin, it is referring to its own ability to choose a country of origin.[34] Nothing before the Tribunal establishes that "S" had no choice but to purchase OCTG manufactured in India. To the contrary, by choosing to purchase directly from a manufacturer, "S" had control over the OCTG's country of origin. Additionally, the purchase order issued by "S" set out product description specifications and included specific notes relevant to the manufacturing process,[35] showing that "S" had an important element of control over the manufacturing process. As correctly noted by the CBSA, control over the country of origin and manufacturing process are two important considerations that distinguish "S" from the Canadian purchaser that was determined *not* to be the importer in *Bicycles*. Unlike the

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30 *Landmark* at paras. 43, 54.

31 *Landmark* at para. 43.

32 Factors indicating that an entity was in reality the importer include that the entity bore selling costs, freight, duties, customs broker's fees and currency exchange costs (*Landmark* at para. 42, citing *Artificial Graphite Electrodes*); was a genuine party to the sales transaction(s) at issue (*Landmark* at para. 42, citing *Artificial Graphite Electrodes*); and retained its own customs broker (*Bicycles* at 7).

33 Factors indicating that an entity was *not* in reality the importer include that the entity was a paper intermediary that did nothing to sell the goods at issue, never had possession of the goods, made no profit or commission on resale of the goods, and only facilitated the payment of charges at the point of entry (*Landmark* at para. 42, 47, citing *Artificial Graphite Electrodes*); was not involved in the action or decision to bring the goods into Canada but rather was hired simply to facilitate the importation (e.g. customs brokerage or logistics services) (*Landmark* at paras. 49–50, citing *Artificial Graphite Electrodes*); made a business decision not to take on the risks inherent to being the importer (*Bicycles* at 6); bought the goods using Canadian currency so it did not assume the risk associated with exchange rate fluctuations (*Bicycles* at 6–7); became the owner of the goods on delivery to its warehouses so it did not assume the risk associated with delivery (*Bicycles* at 6); had no control over the country of origin or the manufacturing process of the goods (*Bicycles* at 7); and did not issue the purchase order to the exporter for the imported goods (*Garlic* at 6, citing *Artificial Graphite Electrodes*).

34 Exhibit MP-2021-001-B-04 (protected) at para. 35.

35 Exhibit MP-2021-001-B-02 (protected) at 50.

situation in *Bicycles*, this evidence indicates that "S" is not only the Canadian purchaser but also in reality the importer of the goods.

[27] Third, "S" bore some risks associated with being an importer, including those associated with exchange rate fluctuations and delivery/transportation. Regarding foreign exchange risk, there is no dispute that "S" contracted to pay for the OCTG in U.S. currency. However, the parties diverge on who bore the risk of exchange rate fluctuation. JSL submits that it bore the risk as part of its normal international business practices conducted in U.S. currency. The CBSA recognizes that JSL assumed some risk by selling the OCTG in U.S. currency rather than its own national currency, but it argues that JSL did so only by virtue of it being an exporter conducting international trade in the common currency of U.S. dollars. The CBSA argues that it cannot be the case that the sale of goods by an international exporter in the dominant currency of international trade—the U.S. dollar—is sufficient to prove that the exporter is the importer of those goods in the destination country. The CBSA further argues that, where a Canadian purchaser agrees to purchase goods from a foreign manufacturer in U.S. currency, it is assuming the risk of Canada–U.S. currency fluctuation, providing evidence indicating that it is an importer.

[28] While the Tribunal recognizes that JSL assumed foreign exchange risk between U.S. currency and its national currency, the Tribunal finds that "S" contracting to pay for the OCTG in the dominant currency of international trade—the U.S. dollar—establishes that it assumed some of the risks associated with exchange rate fluctuations, which is an indicator that it may be the importer. As for delivery/transportation risks, there is no dispute that JSL was responsible for transporting and delivering the OCTG to Canada and that "S" assumed responsibility for and ownership of the OCTG once it was released from customs at the Canadian port of entry. Therefore, the Tribunal finds that "S" assumed some of the risks associated with delivery/transportation in Canada, which is another indicator that it may be the importer. Again, unlike the situation in *Bicycles*, it cannot be said that the transaction was structured in such a way that the Canadian purchaser ("S") did not bear any of the risks inherent to being the importer.

[29] Fourth, the testimony of Mr. Vikas Jhunthra and the submissions of JSL reinforce the idea that "S" was in reality the importer. JSL explains that the arrangements between JSL and "S" were undertaken for good business reasons to accommodate "S" while normal values were being obtained on an import, pay and appeal basis, as per the CBSA's system for issuing new normal values.[36] JSL submits that it was "only a temporary practice" and further submits that it "is not unusual for importers to seek to avoid direct participation of importation, i.e., being an Importer of Record, to avoid dealing with the enforcers."[37] In the Tribunal's opinion, the very nature of this temporary arrangement confirms that it was not on JSL's initiative that the goods in question were manufactured and shipped to Canada and that these processes were rather instigated by "S". The fact that JSL accepted to be the importer of record essentially to accommodate "S" in the context of a "one-off" transaction provides further support for the conclusion that JSL was not in reality the

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36 Exhibit MP-2021-001-B-01 at paras. 2, 4; Exhibit MP-2021-001-B-02 (protected) at paras. 2–4, 11.

37 Exhibit MP-2021-001-B-01 at paras. 20–21; Exhibit MP-2021-001-B-03 at paras. 12–13. The Tribunal understands from Mr. Jhunthra's testimony (*Transcript of Public Hearing* at 25) that, by "importers", JSL means importers like "S".

importer.[38] Moreover, "S" starting to pay the duties in later transactions with JSL, after the shipment at issue,[39] is further evidence that supports the conclusion that "S" is in reality the importer.

[30] Finally, the Tribunal believes that a comparison of the nature of the business conducted by "S" in Canada relative to the business conducted by JSL in India means that it is reasonable to infer, in the absence of compelling evidence to the contrary, that "S" is in reality the importer in Canada. In fact, the evidence discussed above indicates that JSL's role in the transaction was that of a foreign manufacturer/exporter engaged in international trade, while "S" was not only the purchaser of the goods but also the entity that ultimately caused the manufacturing of the goods and their movement from India to Canada. As such, "S" is the entity that acted to bring the goods into Canada.

[31] Taken together, the Tribunal's findings above establish that, in the totality of the circumstances of this case, "S" was in reality the importer of the OCTG at issue.

Is "S" the importer "in Canada" for the purposes of sections 89 and 90 of SIMA?

Positions of the parties

[32] The CBSA submits that, although "in Canada" does not impose a residency or permanent establishment requirement, to constitute an "importer in Canada", the importer must have some degree of physical presence and business activities in Canada. According to the CBSA, the importer in *Bicycles* was found to be "in Canada" based on evidence regarding the way it handled orders in Canada, warehoused the goods in issue in Canada, released the goods to the purchaser in Canada, maintained a salesperson in Canada to assist Canadian purchasers and maintained ownership of the goods until delivered to the purchaser's warehouse. The CBSA asserts that the importer's degree of physical presence and conduct of some business activities in Canada were central to the finding that it had sufficient presence to qualify as an "importer in Canada".

[33] The CBSA argues that, in contrast, JSL has no physical presence and conducts no business activities in Canada. The CBSA submits that having only a Canadian business licence and GST registration number falls short of the modest degree of presence in Canada displayed by the importer in *Bicycles*. The CBSA asserts that JSL's responsibility for and ownership of the OCTG ended at the Canadian border, and there is no evidence establishing that JSL had any presence in or connection to Canada other than having Canadian clients. The CBSA views JSL's claim that it would provide after-sales services to customers in Canada as speculation.

[34] According to the CBSA, only "S" had a sufficient presence in Canada to qualify as an importer "in Canada". The CBSA suggests that, if JSL had been responsible for delivery to a place of business of "S" in Canada, this would have constituted an assumption of the entire delivery risk as well as a business activity in Canada, which would have been signs that JSL may have been the importer in Canada, but this was not the case.

[35] JSL submits that it is the importer "in Canada" for SIMA purposes. Citing *Bicycles*, JSL argues that nothing in SIMA imposes a residency requirement or other specific type of presence in Canada such as a permanent establishment. JSL notes that in *Bicycles* the Tribunal explained that, if

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38 The Tribunal has previously noted with approval the Canadian Import Tribunal's view expressed in *Artificial Graphite Electrodes* that the simple designation of a person or firm on customs entry documents as the importer of record has little meaning. See, for example, *Garlic* at 5–6; *Landmark* at para. 41.

39 *Transcript of Public Hearing* at 25–26.

Parliament had intended to impose a residency requirement, it would have done so expressly as it did in the *Valuation for Duty Regulations* with the definition of "purchaser in Canada".[40] JSL supports the Tribunal's interpretation of "in Canada" as entailing "a presence in Canada that does not necessarily amount to residency or a permanent establishment."[41]

[36] According to JSL, the fact that it has a GST business number, and is properly organized to pay and account for Canadian taxes and duties, indicates that it is "in Canada". JSL also submits that its willingness to stand by its products and provide after-sales service, even though it has not yet had to provide such service in Canada because no problems have arisen, indicates that it is "in Canada". JSL also asserts that it has a presence as a major supplier to oil and gas-related industries in Canada.

[37] Finally, JSL suggests that, if the CBSA's arguments are accepted, non-resident importers would not be able to qualify as importers in Canada under SIMA.

Analysis

[38] Much of the argument of counsel for both parties addressed the question of JSL's qualification as an importer "in Canada". Having found that "S", not JSL, is in reality the importer of the OCTG in issue, the Tribunal considers whether "S" is an importer "in Canada". The Tribunal begins its analysis by considering the meaning of "in Canada". The ordinary meaning of "in" is "inclusion or position within limits of space, time, circumstance".[42] The definition suggests that "in Canada" could be interpreted broadly to encompass circumstances beyond that of physical inclusion or position inside Canada's borders. Indeed, a broad interpretation of the phrase "in Canada" that extends beyond a physical presence in Canada is appropriate, because it recognizes 21st century information technology and international trade realities that underpin the possibility that a non-resident importer without a physical presence in Canada can constitute an importer "in Canada".[43]

[39] However, the meaning of "in Canada" must also be considered in light of SIMA's objective of imposing liability for payment of anti-dumping duties in a manner that discourages and addresses the mischief of dumping. "In Canada" cannot be interpreted so broadly as to undermine that objective. The words "in Canada" must be given some meaning; some kind of presence is required.

[40] In *Bicycles*, the Tribunal determined that the importer must have a "presence" in Canada without, however, equating this "presence" to a residency or permanent establishment requirement in Canada. Contrary to what the CBSA seems to suggest in the current case, the Tribunal did not set a minimum standard. It simply found that, in the case before it, the business practices of the importer demonstrated its presence in Canada.

[41] The Tribunal concludes that the issue is whether the business practices and legal arrangements of the importer clearly demonstrate some presence in Canada, with such presence capable of being demonstrated in a variety of ways.

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40 SOR/86-792; section 2.1.

41 *Bicycles* at 7.

42 *Canadian Oxford Dictionary*, 2nd ed., *s.v.* "in".

43 Notwithstanding the arguments of the CBSA's counsel, the CBSA recognized this possibility. See, for example, *Transcript of Public Hearing* at 49.

[42] In this case, the Tribunal finds that "S", with its company headquarters and various business locations in Canada, has a physical, a business and a legal presence in Canada that are far more extensive than the entity found to be the importer "in Canada" in *Bicycles*. This is certainly sufficient for it to constitute an "importer in Canada".

CONCLUSION

[43] For the reasons above, the Tribunal rules that "S" is the importer in Canada of the OCTG in issue.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

Georges Bujold

Georges Bujold
Member

Peter Burn

Peter Burn
Member