Date: 20090520

Dockets: A-103-08
A-104-08

Citation: 2009 FCA 164

CORAM: **NOËL J.A.**
PELLETIER J.A.
RYER J.A.

BETWEEN:

TIANJIN PIPE (GROUP) CORPORATION

Applicant

and

TENARISALGOMATUBES INC., DALIPAL PIPE COMPANY,
ENERGY ALLOYS, HENG YANG GROUP,
MC TUBULAR PRODUCTS INC., NKKTUBES,
JIANGUSU FANLI STEEL PIPE CO., LTD.,
SHANGDONG MOLONG PETROLEUM,
TIANJIN TUBULAR GOODS MACHINING CO., LTD.,
WUXI LONGHUA STEEL PIPE CO., LTD.,
WUXI SEAMLESS OIL PIPE CO., LTD.
CANADIAN TUBULARS (1997) LTD., CANTAK CORPORATION,
EASTAR INDUSTRY INC., HALLMARK TUBULARS LTD.,
IMEX CANADA INC., PACIFIC TUBULARS,
SALZGITTER MANNESMANN INTL.,
CANADA BORDER SERVICES AGENCY
and ATTORNEY GENERAL OF CANADA

Respondents

and

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA

Intervener

Heard at Ottawa, Ontario, on May 20, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on May 20, 2009.

REASONS FOR JUDGMENT OF THE COURT BY: NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on May 20, 2009)

NOËL J.A.

[1] These are applications for judicial review of two final determinations of dumping and subsidizing issued by the President of the Canada Border Services Agency (CBSA) on February 7, 2008 pursuant to paragraph 41(1)(*a*) of the *Special Import Measures Act*, R.S.C. 1985, c. S-15 (SIMA) respecting certain seamless carbon or alloy steel oil and gas well casing originating in or exported from the People's Republic of China (China). By the first determination it was found that the Tianjin Pipe (Group) Corporation (the applicant or T.P.C.O.) had dumped the goods in issue in Canada (A-104-08) and by the second, it was found that the applicant had benefited from four specific subsidy programs (A-103-08).

[2] The applicant and the Ministry of Commerce of the People's Republic of China as intervener have raised a variety of arguments in support of their attack on both decisions. Only two merit attention. The first is that CBSA erred in holding that the equity in the applicant after the completion of the debt to equity swap had no value.

[3] This raises a question of fact with respect to which this Court cannot intervene unless it is shown that the CBSA based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it.

[4] In this respect, the record reveals that the information relating to the valuation of the debt to equity transaction, which was prepared at the time of the transaction, was sought and that production was refused (Applicant's Record, vol. II, p. 2981).

[5] The applicant nevertheless argued that the CBSA ignored a letter of opinion found at page 758 and following of volume V of the Applicant's Record and in particular an attachment at page 760 entitled "Summary Statement of Assets Appraisal Results of T.P.C.O." which, according to the applicant, reflects the proper valuation.

[6] However, the record reveals that the document in question was considered by the CBSA, and rejected for cogent reasons, as outlined at page 2921 of the volume II of the Applicant's Confidential Record.

[7] In our view, it has not been shown that the CBSA committed an error justifying our intervention when it held that the entire amount of the extinguished debt was to be treated as a subsidy pursuant to section 27.1 of the *Special Import measures Regulations,* (S.O.R./84-927).

[8] The applicant and the intervener further argued that the CBSA misconstrued subsection 20(1) of the SIMA when it held that the price of the goods in issue were "substantially determined" by the Government of China. In this respect, reliance is placed on the dictionary definition of the word "determine" to suggest that the phrase "substantially determined" requires that government

directly cause prices to be set at a particular level. The applicant points out that the CBSA did not find that the Government of China actually participated in decisions to establish domestic prices.

[9] In our view, the use of the expression “substantially determined” necessarily implies something less than completely determined and as such, Parliament did not intend the provision to be restricted to situations where a foreign government directly sets the prices. Indeed, the phrase captures the various ways in which governments can exert a determinative influence on pricing, whether directly or indirectly.

[10] In addition, Parliament has expressly conferred on the President discretion to decide when prices have been “substantially determined” by government, through the qualifying words “in the opinion of the President”. Whether domestic prices were “substantially determined” by the Government of China gives rise to an intensely factual question with respect to which no reviewable error has been demonstrated.

[11] Both of applications will therefore be dismissed with costs in each instance in favour of TenarisAlgomaTubes Inc. and the Crown respondents.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-103-08
STYLE OF CAUSE:	**TIANJIN PIPE (GROUP) CORPORATION and TENERISALGOMATUBES INC., DALIPAL PIPE COMPANY, ENERGY ALLOYS, HENG YANG GROUP, MC TUBULAR PRODUCTS INC., NKTUBES, JIANGUSU FANLI STEEL PIPE CO., LTD., SHANGDONG MOLONG PETROLEUM, TIANJIN TUBULAR GOODS MACHINING CO., LTD., WUXI LONGHUA STEEL PIPE CO., LTD., WUXI SEAMLESS OIL PIPE CO., LTD., CANADIAN TUBULARS (1997) LTD., CANTAK CORPORATION, EASTAR INDUSTRY INC., HALLMARK TUBULARS LTD., IMEX CANADA INC., PACIFIC TUBULARS, SALZGITTER MANNESMAN INTL., CANADA BORDER SERVICES AGENCY and ATTORNEY GENERAL OF CANADA and MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA**
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REASONS FOR JUDGMENT OF THE COURT BY:	Noël, Pelletier and Ryer JJ.A.
DELIVERED FROM THE BENCH BY:	Noël J.A.

APPEARANCES:

Gordon LaFortune	FOR THE APPLICANT AND THE INTERVENER
Geoffrey C. Kubrick	FOR THE RESPONDENT (TenarisAlgomaTubes Inc.)
David Cowie	FOR THE RESPONDENT (Canadian Border Services Agency and Attorney General of Canada)

SOLICITORS OF RECORD:

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John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT (Canadian Border Services Agency and Attorney General of Canada)

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