

ANTI-DUMPING

Judicial review of order by Canadian International Trade Tribunal (Tribunal) deciding not to initiate expiry review in relation to exports by respondent Conares Metal Supply Ltd. (Conares) — In 2012, Tribunal finding that dumping of certain carbon steel welded pipe threatening to cause injury to domestic industry — Imposing anti-dumping duty — Conares requesting producer exclusion from Tribunal's finding based on its zero percent dumping margin — However, Tribunal of view that exclusion tantamount to providing licence to dump; exclusion not warranted other than in most specific set of circumstances — In 2017, Minister of Finance requesting that Canada Border Services Agency (CBSA), Tribunal review finding relating to carbon steel welded pipe pursuant to *Special Import Measures Act*, R.S.C., 1985, c. S-15, s. 76.1(1) — CBSA determining that expiry of Tribunal's injury finding resulting in continuation or resumption of dumping of certain carbon steel welded pipe — Tribunal finding that reintroduction of dumped goods into market could lead to collapse of domestic industry, therefore determining to continue its injury finding — However, consistent with an earlier order it rendered determining that it would not initiate expiry review involving goods of Conares, those goods not included in continued finding — Conares submitting Tribunal's order deciding not to initiate expiry review in relation to exports by Conares not reviewable herein — Arguing that decision as to whether expiry review warranted not made under Act, s. 76.03(5) but under s. 76.03(4); that s. 76.03(5) order merely giving procedural effect to s. 76.03(4) decision; that, although omission may be flaw in legislation, list in s. 96.1(1) not including decisions under s. 76.03(4) — Whether Tribunal erring in interpreting Act's expiry review provisions as entitling it to decide not to initiate expiry review in relation to exports by Conares — Construction adopted by Tribunal unreasonable — Tribunal committing reviewable error in excluding goods of Conares from expiry review — Tribunal's order falling squarely within s. 76.03(5), subject to review herein — S. 76.03 does not on its face contemplate initiation of expiry review of part of a finding; s. 76.03(3) stating that expiry review is of "an order or finding" only — Act providing for Tribunal to conduct four types of reviews of orders, findings — Specifically setting out what may be reviewed — Fact that Parliament specifying that certain reviews may be of "portion" or "aspect" of order or finding, while others may be only in respect of "order or finding," supporting position that Tribunal could not reasonably interpret Act as entitling it to exclude goods of Conares in initiating expiry review — Legislative history also supporting construction of s. 76.03 precluding expiry reviews of part of finding — No explicit authority in Act allowing Tribunal to limit scope of expiry review — This omission deliberate — No ambiguity herein to justify resorting to Canada's international obligations to interpret s. 76.03 — Parliament making clear choice in enacting s. 76.03 — Clarity of that choice leaving room for only one reasonable interpretation of provision, i.e. interpretation permitting Tribunal to initiate expiry review only of "an order or finding" as whole — However, Court declining to grant remedy for several reasons, including fact the granting of a remedy would likely have no ultimate impact — Application dismissed.

NOVA TUBE INC./NOVA STEEL INC. V. CONARES METAL SUPPLY LTD. (A-11-18, 2019 FCA 52, Laskin J.A., judgment dated March 22, 2019, 27 pp.)