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ANTI-DUMPING

Judicial review challenging Canada Border Services Agency (CBSA) conclusion on absence of particular market situation (PMS) in Turkey's heavy plate market — Applicant filed complaint with CBSA pursuant to *Special Import Measures Act*, R.S.C., 1985, c. S-15 (SIMA), s. 31, alleging that certain heavy plate originating in, or exported from, *inter alia* Turkey being dumped into Canada — Further claimed that PMS existed in Turkey — CBSA made preliminary determinations of dumping of heavy plate originating in, or exported from, Turkey — Estimated that Ereğli Demir ve Çelik Fabrikalari T.A.Ş. (Erdemir) dumping heavy plate by a margin of 2.9 percent — Refused request by applicant for preliminary determination calculation worksheets disclosed to Erdemir — President of CBSA terminated dumping investigation in respect of heavy plate exported from Turkey by Erdemir pursuant to SIMA, s. 41(1)(a) — Indicated that, based on information on record, it did not form opinion that PMS existed in heavy plate market in Turkey such that domestic sales did not permit proper comparison with sales to importers in Canada — Determined that total normal value compared to total export price resulted in zero margin of dumping for Erdemir — Main issues whether refusal on part of CBSA to provide applicant preliminary dumping calculations giving rise to breach of procedural fairness; whether failure on part of CBSA to provide President of CBSA final calculations pursuant to which it found that Erdemir had dumping margin of zero (Calculations), include Calculations in statement of reasons, rendering final determination unreasonable; whether failure on part of the President of CBSA to find that PMS existed in heavy plate market in Turkey rendering final determination unreasonable — Failure to disclose preliminary calculation worksheets to applicant not resulting in breach of procedural fairness — Disclosure of CBSA's preliminary calculations done on exceptional basis — Here, no special circumstances warranting disclosure of such information — Although decision in *Franke Kindred Canada Limited v. Jiangmen New Star Enterprise Ltd*, 2014 FC 459 not binding on Court, analysis therein persuasive — No evidence that applicant's counsel did not have access to all information provided by Erdemir, government of Turkey — While applicant did not have access to preliminary calculations, duty of fairness in this matter not extending to disclosure of these internal documents — Failure of CBSA to have Calculations before President of CBSA not departure from rule of law — This issue disposed of in *Canadian Hardwood Plywood and Veneer Association v. Canada (Attorney General)*, 2023 FCA 74, (*Canadian Hardwood*) — Court in *Canadian Hardwood* holding not unreasonable for President of CBSA to rely on memoranda prepared by officers within CBSA, without need to see detailed calculation spreadsheets — Same reasoning applying here — Absence of calculations in statement of reasons not rendering decision unreasonable or resulting in breach of procedural fairness — CBSA's conclusion on absence of PMS in Turkey based on consideration of relevant factors, on evidence in record — Its analysis comprehensive, responsive to applicant's arguments, particular context of SIMA investigations — In present case, CBSA calculated normal value for heavy plate produced in Turkey by Erdemir using SIMA, s. 19(b) — CBSA's treatment of government support programs in Turkey must be

understood within overall context of PMS determination — Not unreasonable for President of CBSA, when considering government support programs in context of PMS determination, to only consider those already assessed under subsidy investigation — Applicant not identifying any particular program having significant impact on heavy plate industry in Turkey nor demonstrating that CBSA's consideration of government support programs unreasonable — SIMA Handbook specifying that volatility must be significant — What must be considered is not volatility itself, but effect of volatility — Not unreasonable for CBSA to conclude that both Erdemir, Turkish government had taken measures to minimize effects of this volatility — CBSA investigated, considered both Turkey, Erdemir in regards to existence of PMS — CBSA alive to fact that a PMS could exist in respect of any goods of particular exporter or of particular country — In summary, CBSA's conclusion on absence of PMS in Turkey based on consideration of relevant factors, on evidence in record — CBSA's analysis comprehensive, responsive to applicant's arguments, particular context of SIMA investigations — Fact that CBSA did not conduct perfect investigation unreasonable standard — Application dismissed.

ALGOMA STEEL INC. V. CANADA (ATTORNEY GENERAL) (A-39-21, 2023 FCA 164, Roussel J.A., public reasons for judgment dated July 25, 2023, 30 pp.)