Federal Court Cour fédérale

Date: 20260121

Docket: T-3388-25

Citation: 2026 FC 96

Montréal, Quebec, January 21, 2026

PRESENT: Madam Justice Go

BETWEEN:

ALGOMA TUBES INC., TENARIS GLOBAL SERVICES (CANADA) INC. AND HYDRIL CANADIAN COMPANY LP

Applicants

and

EVRAZ INC. NA CANADA aka INTERPRO PIPE & STEEL, INC., WELDED TUBE OF CANADA CORPORATION, and ATTORNEY GENERAL OF CANADA

Respondents

ORDER AND REASONS

I. Overview

[1] Algoma Tubes Inc. [Algoma], Tenaris Global Services (Canada) Inc. [Tenaris] and Hydril Canadian Company IP [together "Applicants"] filed a Notice of Application for Judicial Review [Notice of Application] challenging the President of Canada Border Services Agency

[CBSA]'s initiation of an anti-dumping investigation pursuant to their authority under section 31 of the *Special Import Measures Act*, RSC, 1985, c.S-15 [*SIMA*].

[2] One of the Respondents, the Attorney General of Canada [AGC], makes a motion, in writing, pursuant to Rule 369 of the *Federal Court Rules*, SOR/98-106 [*Rules*] for an order striking out the Applicants' Notice of Application, without leave to amend. The AGC submits that the Court lacks jurisdiction over the Notice of Application, that the Applicants are not directly affected by the CBSA's initiation of the investigation, and that the application is premature.

[3] The Applicants submit that the application is not doomed to fail. The Applicants ask the Court to schedule an oral hearing where this motion can be dismissed and thereafter order the application to proceed on a timely basis.

[4] For the reasons set out below, I reject the Applicants' request for an oral hearing, and I grant the AGC's motion.

II. Factual and Legislative Background

A. *The Statutory Framework under the SIMA*

[5] Referencing *GRK Fasteners v Canada (Attorney General)*, 2011 FC 198 [*GRK*] at para 5, the AGC submits that the purpose of the *SIMA* is to "protect Canadian manufacturers against 'dumping': selling foreign, comparable goods in Canada at a price lower than their selling price

in the exporting country, or below the cost of their production and ‘subsidizing’: when goods imported into Canada benefit from foreign government financial assistance. To protect against dumping and subsidizing, Canadian authorities may impose duties on imported goods under the *SIMA*.”

[6] While the *SIMA* aims at addressing both the issues of dumping and subsidizing, and many of the legislative provisions apply to both issues, for the purpose of this order, I will only refer to dumping when referencing the relevant provisions.

[7] Under subsection 31(1) of the *SIMA*, the CBSA President shall initiate an investigation into dumping of goods on its own initiative if there is reasonable indication that certain dumping has caused injury or is threatening to cause injury. Subsection 31(1) also obligates the CBSA President to initiate an investigation upon a written complaint if the CBSA President is of the opinion that there is evidence of dumping and that it has caused injury or is threatening to cause injury.

[8] Subsection 31(2), under the heading “Standing,” states that no investigation may be initiated under subsection (1) as a result of a complaint unless: (a) the complaint is supported by domestic producers whose production represents more than fifty per cent of the total production of like goods by those domestic producers who express either support for or opposition to the complaint; and (b) the production of the domestic producers who support the complaint represents 25 per cent or more of the total production of like goods by the domestic industry. I

will address this provision further below, as the Applicants rely on it quite heavily in their submissions.

[9] The *SIMA* sets out the timeline within which the CBSA President must initiate a complaint. Once the CBSA President initiates an investigation, it must notify the Canadian International Trade Tribunal [CITT], among others, and the notice is published in the *Canada Gazette*: s. 34(1)(a). The CBSA President shall then provide the CITT with information and material required by the CITT: *SIMA*, s. 34(1)(b).

[10] The *SIMA* places obligations on both the CBSA President and the CITT to make a preliminary inquiry into dumping.

[11] With respect to the CITT, the *SIMA* states that, without delay after receipt of the notice of an initiation of an investigation, the CITT shall make a preliminary inquiry whether the evidence discloses a reasonable indication that dumping has caused injury or is threatening to cause injury: *SIMA*, s. 34(2). Following which, if the CITT concludes that the evidence does not disclose a reasonable indication that the dumping has caused injury or is threatening to cause injury, the CBSA President shall terminate its investigation: *SIMA*, s. 35(1)(b).

[12] With respect to the CBSA President, the *SIMA* provides that, after day 60 and on or before day 90 following the initiation of the investigation, the CBSA President shall make a preliminary determination into whether the goods are being dumped after estimating and specifying the dumping margin and the goods to which this applies: *SIMA*, s. 38. Further, the

CBSA President shall terminate its investigation if it is satisfied that the volume of dumping of the goods is negligible: *SIMA*, ss. 35(1)(a), 35(2), 35(3), 41(1)(a) and 41(4).

[13] Finally, the *SIMA* specifies a timeline by which the CBSA President shall terminate the investigation in respect of any goods if it is satisfied that there has been no dumping or that the dumping margin on those goods is insignificant: *SIMA*, s. 41(1)(a). Conversely, the CBSA President shall, within a specified timeline, make a final determination of dumping in respect of goods for which the investigation has not been terminated if it is satisfied that the goods have been dumped: *SIMA*, s. 41(1)(b).

[14] With respect to CITT, there are two aspects to its final responsibilities. First, after receiving a notice of preliminary determination from the CBSA President under subsection 38(3), the CITT is obligated to promptly begins its injury inquiry with respect to whether the dumping of the goods has caused injury or is threatening to cause injury. Second, before or on the 120th day following the initiation of the investigation, the CITT shall make any applicable order or finding after the CBSA President makes it final determination: *SIMA*, s. 42(1) and 43. However, the CITT only completes this step if it receives a final determination from the CBSA President. In other words, a terminated investigation of the CBSA President will not lead to a CITT order or a finding under section 43 of the *SIMA*.

[15] Section 96.1 of the *SIMA* provides that an application may be made to the Federal Court of Appeal [FCA] to review and set aside certain decisions of the CBSA President and the CITT,

including the CBSA President's decision under paragraph 41(1)(a) to terminate an investigation and a final determination of the CBSA President under paragraph 41(1)(b).

[16] Section 96.1(2) provides that an application may be made under s. 96.1 on the ground that the CBSA President or the CITT, as the case may be:

(a) acted without jurisdiction, acted beyond the jurisdiction of the President or the Tribunal or refused to exercise that jurisdiction;	**a)** le président ou le Tribunal a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;
(b) failed to observe a principle of natural justice, procedural fairness or other procedure that the President or the Tribunal was required by law to observe;	**b)** il n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute procédure qu'il était légalement tenu de respecter;
(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;	**c)** il a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;
(d) based a decision or order on an erroneous finding of fact that the President or the Tribunal made in a perverse or capricious manner or without regard for the material before the President or the Tribunal;	**d)** il a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;
(e) acted, or failed to act, by reason of fraud or perjured evidence; or	**e)** il a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;
(f) acted in any other way that was contrary to law.	**f)** il a agi de toute autre façon contraire à la loi.

B. *The Complaint to the CBSA President and the Applicants' Objection to the Initiation of the Investigation*

[17] The Applicants stipulate in their Notice of Application that Algoma is a Canadian manufacturer of oil country tubular goods [OCTG] with operations in Sault Ste. Marie, Ontario.

Algoma has been the largest producer of OCTG in Canada in 2024 and 2025, and its production accounts for the majority of Canadian OCTG production.

[18] Tenaris is the parent company of Algoma and is a seller of OCGC in the Canadian market.

[19] On June 20, 2025 the Respondents Evaz Inc. NA Canada (which has since changed its legal name to Interpro Pipe & Steel Inc.) and Welded Tube of Canada Corporation [together "Corporate Respondents"] filed a complaint with the CBSA alleging that OCTG imported from a company in Türkiye, a company in South Korea, and affiliates of Tenaris in the United States, Mexico and the Philippines [Imported OCTG] were being dumped causing material injury to the domestic industry.

[20] On August 11, 2025, the CBSA President initiated an anti-dumping investigation into the Imported OCTG, pursuant to its authority under section 31 of the *SIMA*.

[21] The Applicants state that a threshold issue in initiating an anti-dumping investigation is whether the complaint has sufficient support from the domestic industry. As noted above, subsection 31(2) of the *SIMA* states that no investigation may be initiated unless the complaint is supported by domestic producers whose production represents more than 50 per cent of the total production of like goods; and the production of the domestic producers who support the complaint represents 25 per cent or more of the total production of like goods by the domestic industry.

[22] The Applicants acknowledge that paragraph 31(2)(b) was met in this case but argue that the requirement of paragraph 31(2)(a) was not. This is because Algoma opposed the complaint, and the only producers who supported the case, the Corporate Respondents, represented less than 50% of Canadian production.

[23] The Applicants allege that after receiving the complaint from the Corporate Respondents, the CBSA did not consult with Algoma before initiating the investigation. The Applicants further state that Algoma learned through press releases that the Corporate Respondents had filed a complaint. In response, Algoma and Tenaris placed material in front of the CBSA President showing Algoma represented the majority of domestic production and expressly opposed the complaint. Despite this, the CBSA President did not engage with Algoma or Tenaris, and wrongly excluded them from the domestic industry.

[24] The Applicants allege that, as Algoma alone represents the majority of Canadian OCTG production, its opposition to the complaint would and should have been determinative. The complaint's standing requirement under subsection 31(2) being not satisfied, the CBSA President was thus not permitted to initiate an investigation.

[25] The Applicants also allege that the CBSA has deviated from its policy and practice to engage with known and potential Canadian producers before initiating an investigation.

[26] The Applicants filed their Notice of Application on September 9, 2025, seeking to set aside the CBSA President's initiation of an investigation. The Applicants allege that the CBSA

President committed reviewable errors in their decision to initiate the investigation and breached procedural fairness by failing to advise Algoma about the complaint and failing to provide Algoma with reasonable notice regarding its potential exclusion from the domestic industry under the complaint.

III. Preliminary Issues

[27] As mentioned above, the AGC brings this motion to strike, in writing, pursuant to Rule 369 of the *Rules*. In their response to the AGC's motion, the Applicants submit the motion is inappropriate for a written hearing. The Applicants submit that the following factors weigh in favour of an oral hearing:

a. Motions to strike are among the most complex of all interlocutory motions and the complexity of the analysis should drive whether oral argument is necessary, with the nature and difficulty of the issues raised forming the central considerations in determining whether a written hearing is appropriate: *Al Omani v R*, 2016 FC 317, [*Al Omani*], at para 7.

b. The complexity of the issues in this motion militate strongly in favour of oral argument. The complexity of this novel matter is reflected by the Respondents' co-mingling of subsections 31(1) and 31(2), and by their reliance on law made prior to modern administrative law principles regarding procedural fairness and natural justice.

c. Complexity is also reflected in the processes agreed to by the parties to date, with both parties seeking extensions of time to ensure their submissions are put in a logical sequence.

d. This is a novel matter; the first time a party has tried to strike an application for judicial review in relation to the CBSA President's breach of subsection 31(2).

e. The importance of oral advocacy cannot be underestimated: *Al Omani* at para 11. Given the significance of the issues at stake, oral advocacy is essential to ensure the Court has the benefit of full and responsive submissions.

[28] While I agree with the Applicants that some motions to strike may, and this motion does, involve certain complex issues, I do not find the complexity of the issues *per se* necessitates the Court to conduct an oral hearing in this instance.

[29] Further, irrespective of whether the Court has considered the specific provisions under the *SIMA* that the Applicants are seeking to rely on, the legal principles applicable to determining a motion to strike a notice of application remain the same.

[30] Finally, the Court notes that all the parties involved are represented by competent counsel who have filed comprehensive and well-articulated submissions in support of their position. As the AGC submits, and I agree, the parties' records are not voluminous, and they only contain legal argument and no evidence.

[31] For these reasons, the Court finds that this motion can be appropriately dealt with in writing.

IV. Issues

[32] The main issue in this motion is whether the Court should strike the Notice of Application.

[33] The AGC raises several issues in support of their motion, namely:

a. The CBSA President's initiation of the investigation is not amenable to judicial review;

b. The Notice of Application is deficient and fails to allege sufficient material facts of any direct effect the decision has on the Applicants such that the judicial review is doomed to fail; and

c. The Application is premature.

[34] The Corporate Respondents, who support the AGC's motion, makes submissions on the following two issues:

a. The CBSA President's decision to initiate an anti-dumping investigation does not affect any legal rights, privileges, or interests, and does not give rise to a duty of fairness; and

b. The application is premature.

[35] In response, the Applicants raise the following issues:

a. What is the standard for striking an application for judicial review?

b. Is the CBSA President's initiation decision amenable to judicial review?

c. Is the application premature?

d. Is the pleading in the Notice of Application sufficient?

V. Analysis

[36] I find the determinative issue here is that the CBSA President's initiation of the investigation is not amenable to judicial review because it does not affect any legal rights, privileges, or interests. I will focus my analysis on this issue.

A. *Legal principles governing a motion to strike a Notice of Application for Judicial Review*

[37] The Court's jurisdiction to strike the underlying application is grounded "in the Courts' plenary jurisdiction to restrain the misuse or abuse of courts' processes:" *JP Morgan Asset Management (Canada) Inc. v Canada (National Revenue)*, 2013 FCA 250 at para 48 [*JP Morgan*].

[38] The Court will only strike a notice of application if is so clearly improper as to be "bereft of any possibility of success:" *JP Morgan* at para 47. To do so, "[t]here must be a 'show stopper' or a 'knockout punch' – an obvious, fatal flaw striking at the root of this Court's power to entertain the application:" *JP Morgan* at para 47.

[39] In considering a motion to strike, the Court must read an application "with a view to understanding the real essence of the application" and it must gain "a realistic appreciation" of the application's "essential character" by reading it holistically and practically without fastening onto matters of form: *JP Morgan* at paras 49-50.

[40] This Court has found that an application is bereft of success if the Court lacks statutory jurisdiction to entertain it: *Prairies Tubulars (2015) Inc. v Canada (Border Services Agency)*,

2018 FC 991 [*Prairies Tubulars*] at paras 41-49, citing *Spike Marks Inc. v Canada (Attorney General)*, 2008 FCA 406 at paras 19 and 21, [2008] F.C.J. No. 1756 and *JP Morgan*.

[41] Further, the Court has found that a decision that does not affect rights, impose legal obligations, or cause prejudicial effects is not amenable to judicial review: *Empire Company Limited v Canada (Attorney General)*, 2024 FC 810 (aff'd 2025 FCA 34) [*Empire Company*] at para 27.

B. *The CBSA President's initiation to investigate dumping is not amenable to judicial review because it does not affect rights, impose legal obligations, or cause prejudicial effects*

[42] The AGC submits that the CBSA President's initiation of an investigation under section 31 of the *SIMA* is a preliminary procedural step that imposes no "triggering impact": *Empire Company* at paras 48-49. The AGC submits that this conclusion is consistent with the Court's decisions in *Shaw Industries, Inc v Canada (MNR)*, [1992] FCJ No 222 at paras 13-14 [*Shaw*] and *Ronald A Chisholm Ltd v Canada (MNR)*, (1986), 5 FTR 1 [*Chisholm*], finding that a decision to initiate an investigation into dumping:

> does not give rise to a *lis* between specific parties at this stage, since the interests at stake are potentially much broader than those of a particular importer. It is the initial stage of a process in which, should it proceed so far as an inquiry [by the Tribunal] any interested parties will be able to make submissions to that Tribunal on the question of material injury.

[43] Citing *Empire Company* at paras 28-31 where Chief Justice Crampton, as he then was, found a procedural step that gives the Competition Commissioner access to the formal investigative powers does not cause any "Triggering Impact," the AGC argues that the CITT and

CBSA President can terminate the inquiry and investigation without a Triggering Impact to anyone. As the impugned conduct fails to cause any Triggering Impact, there is thus no right to review.

[44] In response, the Applicants argue that, reading the Notice of Application holistically, the essential character of this application is a challenge to the CBSA President's initiation of an investigation without satisfying the "standing condition" under paragraph 31(2)(a) of the *SIMA*.

[45] The Applicants further submit that unlike subsection 31(1), which permits the CBSA President to initiate an investigation if she is of the "opinion" that certain requirements are met, paragraph 31(2)(a) is a mandatory condition that does not depend on the CBSA President's opinions.

[46] The Applicants contend that, where it is alleged and to be taken to be true in this motion that Algoma constitutes more than 50 percent of domestic production, paragraph 31(2)(a) affords Algoma a "determinative legal right" to prevent an investigation from being initiated.

[47] The Applicants further argue that the CBSA's initiation of the investigation fails to affect legal rights, impose legal obligations or cause prejudicial effects. They also submit that the AGC relies on cases regarding different provisions and statutory schemes, none of which involves the standing condition in paragraph 31(2)(a) which requires the CBSA President to consider a third party's support or opposition, or any standing determination at all.

[48] The Applicants go even further to suggest that, when a particular domestic producer like Algoma holds an effective "veto right" regarding the complaint's standing and the CBSA President's ability to initiate an investigation, the AGC cannot argue that the interests at stake are potentially much broader than those of a particular importer in relation to section 31.

[49] Finally, the Applicants submit that the underlying application concerns a statutory breach, rather than an administrative decision to commence an investigation generally. The Applicants argue that the provision that the Competition Commission relies on to cause an inquiry in *Empire Company*, is not a "standing provision," but rather it is more akin to subsection 31(1) of the *SIMA*. Further, *Empire Company* did not involve a "veto right" with respect to the Competition Commissioner's investigation, whereas in the case at bar a majority domestic producer has the statutory right to "veto" an investigation. As the CBSA already completed the inquiry into whether Algoma is part of the domestic industry for the purposes of the standing requirements, they deprived Algoma of its right to prevent initiation of the investigation.

[50] I find the Applicants' submissions non-persuasive.

[51] While I acknowledge that the cases relied on by the AGC either deal with different statutes or different provisions of the *SIMA*, I disagree with the Applicants that the *dicta* in those cases are thus not applicable to the case at hand.

[52] As the AGC submits, and I agree, the Court cannot accept as true the conclusory legal statement that Algoma had a legal right to prevent an investigation from being initiated. I note

that the Applicants cite no authorities when they make this argument or the argument that they have a "veto right" regarding the complaint.

[53] Contrary to the Applicants' argument, the *SIMA* does not afford domestic producers with an "effective veto right." Rather, in the context of an investigation into potential dumping, the CBSA President shall consider several factors including those set out under paragraphs 31(2)(a) and (b) in order to determine whether to initiate an investigation based on a complaint.

[54] For instance, at subsection 31(2.1), the *SIMA* provides:

Meaning of *domestic producers*	***producteurs nationaux***
(2.1) For the purpose of paragraph (2)(a), if a domestic producer is an importer of, or is related to an exporter or importer of, allegedly dumped or subsidized goods, ***domestic producers*** may, subject to subsection 2(1.1), be interpreted as meaning the rest of those domestic producers.	**(2.1)** Pour l'application de l'alinéa (2)a) et sous réserve du paragraphe 2(1.1), peut être exclu des ***producteurs nationaux*** le producteur national qui est lié à un exportateur ou à un importateur de marchandises présumées sous-évaluées ou subventionnées, ou qui est lui-même un importateur de telles marchandises.

[55] Also at subsection 31(3), the *SIMA* states:

Meaning of *domestic industry*	**Définition de *branche de production nationale***
(3) In paragraph (2)(b), domestic industry means, subject to subsection 2(1.1), the domestic producers as a whole of the like goods except that, if a domestic producer is related to an exporter or importer of allegedly dumped or subsidized goods, or is an importer of such goods, ***domestic industry*** may be interpreted as	**(3)** Pour l'application de l'alinéa (2)b) et sous réserve du paragraphe 2(1.1), ***branche de production nationale*** s'entend de l'ensemble des producteurs nationaux des marchandises similaires. Peut toutefois en être exclu le producteur national qui est lié à un exportateur ou à un importateur de marchandises présumées sous-évaluées ou

meaning the rest of those domestic producers.	subventionnées, ou qui est lui-même un importateur de telles marchandises.

[56] Subsection 2(1.1) of the *SIMA* refers to domestic industry that is based on regional markets, which may or may not be applicable to the case at hand.

[57] Subsection 31(4) further defines, for the purpose of subsections (2.1) and (3), when a domestic producer is found to be "related to an exporter or importer" by considering whether the producer either directly or indirectly controls, or is controlled by the exporter or importer or a third person, and whether there are grounds to believe the producer behaves differently towards the exporter or importer than does a non-related producer.

[58] In other words, in deciding whether to initiate an investigation into a complaint, while it is true that the CBSA President shall consider the view of domestic producers whose production represents more than 50 per cent of the total production, the *SIMA* also requires the CBSA President to consider who constitutes "domestic producers" and their relationships, if any, with the relevant importers, in the case of dumping. The CBSA President cannot make their decision to initiate an investigation based solely on subsection 31(2).

[59] To argue that by virtue of being the largest producer of OCTG in Canada with production that accounts for the majority of Canadian OCTG production gives it "veto right" under the *SIMA*, the Applicants are asking the Court to draw a legal conclusion that is not grounded on the statute and is inconsistent with the overall legislative scheme.

[60] The AGC points out in their reply that the Applicants' argument is not faithful to the Notice of Application which complains not of a breach of statute, but of an unreasonable application of particular subsections of section 31 which permit the exclusion of certain domestic producers.

[61] I agree with the AGC.

[62] The Applicants argue in the Notice of Application that a domestic producer cannot be "related" to an exporter or importer unless its behaviour is different from a producer that has no affiliation with an exporter or importer. Citing subsection 31(4) of *SIMA*, the Applicants submit that the CBSA's determination that "Algoma behaves differently than a non-related producer was unreasonable. CBSA did not [*sic*] sufficient justification as to why it believes Algoma behaves differently than a non-related producer, nor did the Complainants provide any evidence as to how Algoma's behaviour is different than it would otherwise be. The justification for determining Algoma to be a 'related' producer is wholly deficient."

[63] The Applicants further argue that an exclusion under subsection 31(3) from the relevant domestic industry is a matter of discretion, rather than an automatic exclusion which the CBSA wrongly treated the Algoma as under section 31(3) of the *SIMA*.

[64] These arguments suggest that the Applicants acknowledge paragraph 31(2)(a) must be considered in conjunction with other provisions under section 31 in order to determine where the CBSA President shall initiate an investigation and which domestic producer shall be excluded.

This undermines their argument that paragraph 31(2)(a) confers a right on them to veto the investigation.

[65] Furthermore, by advancing the argument that the exclusion of a domestic producer is "a matter of discretion," I find the Applicants effectively concede that the CBSA President retains certain discretion when considering whether to initiate a complaint and whether to exclude a domestic producer in the consideration of the complaint. That the CBSA President has certain discretion when exercising its authorities to initiate an investigation is antithetic to the notion that the domestic producers in question have a right to veto that very investigation.

[66] Further, in arguing that the CBSA unreasonably applied subsection 31(4), the Applicants are seeking to challenge the CBSA President's initiation on the basis that it was unreasonable in light of the applicable facts and statutory provisions, and not as a breach of their statutory right.

[67] In addition, I note there is a long line of cases from this Court and from the FCA finding various determinations of the CBSA President under the *SIMA* not amenable to judicial review, beginning, but not ending, with *Shaw* and *Chisholm*.

[68] In *Toyota Tsusho America Inc. v Canada (Border Services Agency)*, 2010 FC 78 (aff'd 2010 FCA 262) [*Toyota*], Justice Tremblay-Lamer concluded that the CBSA's determination of duty under the *SIMA* was not reviewable. She concluded that "the scheme of re-determinations and appeals provided by the SIMA is complete and, in enacting it, Parliament has clearly

expressed its intention to oust the jurisdiction of this Court to review decisions taken under the authority of that statute:" *Toyota* at para 20.

[69] In *GRK*, Justice O'Reilly concluded that the results of the CBSA's re-investigation were not amenable to judicial review. Justice O'Reilly made this conclusion on the basis that the appeal remedies under the *SIMA* are an adequate alternative to any recourse GRK might otherwise have to judicial review: *GRK* at para 20. In *Prudential Steel ULC v Canada (Attorney General)*, 2015 FC 1077, the Court reached a similar conclusion.

[70] The FCA in *Prudential Steel Ltd. v Bell Supply Company*, 2016 FCA 282, [2017] 3 F.C.R. 165, affirmed the decision of this Court finding the CBSA's advanced ruling on whether certain OCTG originating in China was subject to anti-dumping and countervailing duties not amenable to judicial review.

[71] In *Prairies Tubulars*, a case cited by the Applicants, the Court found its jurisdiction in relation to challenges to assessments of anti-dumping duties is ousted by the provisions of section 18.5 of the *Federal Courts Act*: *Prairies Tubulars* at para 4.

[72] In *Husteel Co Ltd v Canada (Attorney General)*, 2020 FC 430, at para 25, the Court found that the issuing of prospective normal values through a normal value review is not a decision amenable to judicial review because it has no legal effects, and that it is a preliminary step in the administrative process that may eventually lead to an assessment of anti-dumping duties when goods are imported into Canada.

[73] More recently, in *Çolakoğlu Metalurji A.S. v Altasteel Inc.*, 2025 FCA 29 [*Çolakoğlu Metalurji A.S.*], the FCA confirmed the decision of Justice Turley of this Court striking the appellants' application for judicial review of the results of a CBSA's reinvestigation under *SIMA*. The appellants argued that the Federal Court failed to appreciate the effect of the normal values determined in a CBSA reinvestigation. They asserted that the reinvestigation prejudiced them by causing a loss of revenue and the *SIMA* gives them no right of redress against this.

[74] After finding that the same argument can be said "for many preliminary or interim steps taken by other agencies," Justice Stratas continued in *Çolakoğlu Metalurji A.S.*:

> [11] But absent the sort of exceptional circumstance (proven by admissible evidence) where the rare administrative law remedy of prohibition is available—and its availability in the face of the sort of comprehensive legislative regime we have here is unclear—none of these preliminary or interim steps create the sort of immediate, certain and final impact on legal rights, legal obligations or practical prejudice that triggers a right to dash off to a judicial review court: see the authorities in paragraph 3, above. This standpoint is also supported by all of the rationales supporting the near-absolute rule against judicial reviews of interlocutory or interim administrative decisions: *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61, [2011] 2 F.C.R. 332. As well, the evidence before us falls well short of the sort of specific and cogent evidence we need to justify the extraordinary and rare intervention of the Court by way of prohibition. The evidence goes no further than describing the general practices and routines of the Agency as set out in an Agency handbook. We have no evidence as to how these procedures actually operate in practice.
>
> [12] The appellants rely on certain cases predating *Prudential Steel*. We consider that *Prudential Steel*, as the later authority, is the controlling authority that binds us in this case. They also rely on isolated words in the Supreme Court's decision in *Finlay v. Canada (Minister of Finance)*, 1986 CanLII 6 (SCC), [1986] 2 S.C.R. 607, 71 N.R. 338. We note that *Finlay* was a case on the sufficiency of an applicant's interest to have standing to bring a judicial review. It has no relevance to the concerns in this case—lack of immediate, certain and final impact on the affected party and prematurity.

> [13] We also note that the appellants' submissions, if accepted, would run counter to the legislative scheme of the Special Import Measures Act. In this case, there is no constitutional challenge to any provisions of the Act, so we must deal with the Act as written. The Act contemplates that the Agency will have broad administrative flexibility to estimate future normal values under section 96, normal values are not determined until importation, and challenges to such determinations, whether by importers, exporters or others directly affected by the decision, must be made under the redetermination and appeal provisions in sections 57–62. The legislative regime does give an "exporter" or "a person who deems himself aggrieved" (which could include affected exporters) rights in the legislative regime, which suggests that Parliament turned its mind to the standing of exporters to launch reviews and when they can do so: see, *e.g.*, ss. 58(1.1) and 61(1).
>
> [14] The appellants' submissions, if accepted, would undermine this orderly and escalating series of reviews of determinations that culminate in an appeal to the Canadian International Trade Tribunal and, later, an appeal to this Court on a question of law. A judicial review of the sort attempted here would run roughshod over this legislative scheme.
>
> [15] That we cannot permit. Parliament passed this legislative scheme. Parliament's legislative intent is the "polar star" of judicial review: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 4 S.C.R. 653 at para. 33. This reflects an elementary but very important point. Courts are in no different position from the public they serve: they too must follow the law.

[75] While the factual circumstances that gave rise to the above noted decisions are not the same, nor are the basis for the Court's decisions to strike out the applications for judicial review, the underlying rationale for ousting the Court's jurisdiction is similar, namely, "absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted:" *C.B. Powell Ltd. v Canada (Border Services Agency)*, 2010 FCA 61 [*C.B. Powell*] at para 31. Doing so "prevents fragmentation of the administrative process and piecemeal court proceedings, eliminates the large costs and delays associated with premature forays to court and avoids the

waste associated with hearing an interlocutory judicial review when the applicant for judicial review may succeed at the end of the administrative process anyway:" *C.B. Powell* at para 32.

[76] As I have rejected the Applicants' argument that their "right" to veto the CBSA President's investigation has been breached, I find the Notice of Application is bereft of success because the CBSA President's initiation to investigate dumping is not amenable to judicial review since it does not affect rights, impose legal obligations, or cause prejudicial effects.

[77] I also find the Applicants' submissions, if accepted, would undermine the orderly and escalating series of reviews of determinations as set out in *SIMA* and that a judicial review of the sort attempted here would run roughshod over this legislative scheme: *Çolakoğlu Metalurji A.S.* at paras 13-14.

[78] I also consider the Applicants' submission that the CBSA President failed to assess subsection 31(2) in a fashion consistent with the CBSA's policy and practices of sending "standing orders" to known and potential Canadian producers prior to initiating an investigation, and in so doing breached the principles of procedural fairness.

[79] As the AGC further submits, and I agree, the Court cannot decide questions of procedural fairness where the administrative conduct complained of is not reviewable. As the Court remarks in *Dow v Canadian Nuclear Safety Commission*, 2020 FC 376 at para 10: "For a party to have a right to procedural fairness in respect of a matter, the matter must affect that party's rights, privileges or interests (*Cardinal v Director of Kent Institution*, [1985] 2 SCR 643 at 653)."

[80] Having found the Applicants have not demonstrated that the CBSA President's initiation of investigation affects the Applicants' rights, I therefore find that the Applicants cannot proceed with the application on the ground of procedural fairness without the existence of a reviewable administrative decision.

[81] I acknowledge the Applicants' argument that their right to apply for review under section 96.1 of the *SIMA* is subject to the requirement that the matter complained of could result in the Court granting under subsection 96.1(6) in respect of the decision under review. However, as the AGC notes, it does not mean the final decisions enumerated at subsection 96.1(1) cannot be challenged on the basis of an interlocutory matter which occurred during the course of the administrative process.

[82] As noted above, subsection 96.1(2) sets out a broad set of grounds upon which to challenge the decisions of the CBSA and the CITT, as the case may be, including jurisdictional ground, procedural fairness breach, errors in law whether or not the error appears on the face of the record, and errors in findings of fact, etc.

[83] Should the CBSA President's investigation continue, and should it result in a final determination that affects the Applicants' rights, impose legal obligations, or cause prejudicial effects on the Applicants, the Applicants can avail themselves of an application to the FCA under section 96.1 of the *SIMA* and advance some, if not all, of the arguments that they seek to rely on in the Notice of Application.

VI. Conclusion

[84] The AGC’s motion is granted.

VII. Costs

[85] The Court orders the parties to make submissions on costs within 30 days of the date of this order.

ORDER in T-3388-25

THIS COURT'S ORDER is that:

1. The Attorney General of Canada's motion for an order striking out the Notice of Application of the Applicants, without leave to amend, is granted, with costs.

2. The parties shall file their submissions on costs within 30 days of the date of this order.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-3388-25
STYLE OF CAUSE:	ALGOMA TUBES INC., TENARIS GLOBAL SERVICES (CANADA) INC. AND HYDRIL CANADIAN COMPANY LP v EVRAZ INC. NA CANADA AKA INTERPRO PIPE & STEEL, INC., WELDED TUBE OF CANADA CORPORATION, AND ATTORNEY GENERAL OF CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	GO J.
DATED:	JANUARY 21, 2026

APPEARANCES:

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