Federal Court of Appeal | Cour d'appel fédérale

Date: 20200228

Dockets: A-196-17
A-193-17
A-195-17

Citation: 2020 FCA 58

CORAM: **STRATAS J.A.**
RENNIE J.A.
WOODS J.A.

Docket: A-196-17

BETWEEN:

FLUOR CANADA LTD.

Applicant

and

SUPREME GROUP LP, WAIWARD STEEL LP, SUPERMETAL STRUCTURES INC., WALTERS INC., OCEAN STEEL & CONSTRUCTION LTD., CANADIAN INSTITUTE OF STEEL CONSTRUCTION, IRONWORKERS INTERNATIONAL, ANDRITZ HYDRO CANADA INC., CANADIAN NATURAL RESOURCES LTD., CH2M HILL CANADA LTD., CHINA CHAMBER OF INTERNATIONAL COMMERCE, DELEGATION OF THE EUROPEAN UNION TO CANADA, EMBASSY OF SPAIN – ECONOMIC AND COMMERCIAL OFFICE, CINTASA, S.A., LAFARGE CANADA INC., SUNCOR ENERGY INC., SHANGUAI SHUANGYAN CHEMICAL EQUIPMENT MANUFACTURING CO., SHANGHAI YANDA ENGINEERING CO. LTD., YANDA CANADA LTD., YANDA (HAIMEN) HEAVY EQUIPMENT MANUFACTURING CO. LTD., LNG CANADA DEVELOPMENT INC.

Respondents

Docket: A-193-17

AND BETWEEN:

SUNCOR ENERGY INC.,
FORT HILLS ENERGY L.P.

Applicants

and

SUPERMETAL STRUCTURES INC., SUPREME GROUP LP, WAIWARD STEEL LP, CANADIAN INSTITUTE OF STEEL CONSTRUCTION, CH2M HILL CANADA LTD., CINTASA, S.A., LAFARGE CANADA INC., FLUOR CANADA LTD., CHINA CHAMBER OF INTERNATIONAL COMMERCE, CANADIAN NATURAL RESOURCES LTD., YANDA CANADA LTD., SHANGHAI SHUANGYAN CHEMICAL EQUIPMENT MANUFACTURING CO., SHANGHAI YANDA ENGINEERING CO. LTD., YANDA (HAIMEN) HEAVY EQUIPMENT MANUFACTURING CO. LTD, EMBASSY OF SPAIN, DELEGATION OF THE EUROPEAN UNION TO CANADA, ENBRIDGE PIPELINES INC., ANDRITZ HYDRO CANADA LTD., IRONWORKERS INTERNATIONAL, OCEAN STEEL & CONSTRUCTION LTD., WALTERS INC., LNG CANADA DEVELOPMENT INC.

Respondents

Docket: A-195-17

AND BETWEEN:

LNG CANADA DEVELOPMENT INC.

Applicant

and

CANADIAN INSTITUTE OF STEEL CONSTRUCTION, IRONWORKERS INTERNATIONAL, OCEAN STEEL & CONSTRUCTION LTD., SUPERMETAL STRUCTURES INC., SUPREME GROUP LP, WAIWARD STEEL LP, WALTERS INC., ANDRITZ HYDRO CANADA INC., CANADIAN NATURAL RESOURCES LTD., CH2M HILL CANADA LTD., ENBRIDGE PIPELINES INC., CHINA CHAMBER OF INTERNATIONAL COMMERCE,

CINTASA, S.A., LAFARGE CANADA INC., DELEGATION OF THE EUROPEAN UNION TO CANADA, EMBASSY OF SPAIN – ECONOMIC AND COMMERCIAL OFFICE, FLUOR CANADA LTD., SHANGUAI SHUANGYAN CHEMICAL EQUIPMENT MANUFACTURING CO., SHANGHAI YANDA ENGINEERING CO. LTD., SUNCOR ENERGY INC., YANDA CANADA LTD., YANDA (HAIMEN) HEAVY EQUIPMENT MANUFACTURING CO. LTD., AND THE ATTORNEY GENERAL OF CANADA

Respondents

Heard at Toronto, Ontario, on April 11, 2018.

Judgment delivered at Ottawa, Ontario, on February 28, 2020.

REASONS FOR JUDGMENT BY: THE COURT

Federal Court of Appeal | Cour d'appel fédérale

Date: 20200228

Dockets: A-196-17
A-193-17
A-195-17

Citation: 2020 FCA 58

CORAM: **STRATAS J.A.**
RENNIE J.A.
WOODS J.A.

Docket:A-196-17

BETWEEN:

FLUOR CANADA LTD.

Applicant

and

SUPREME GROUP LP, WAIWARD STEEL LP, SUPERMETAL STRUCTURES INC., WALTERS INC., OCEAN STEEL & CONSTRUCTION LTD., CANADIAN INSTITUTE OF STEEL CONSTRUCTION, IRONWORKERS INTERNATIONAL, ANDRITZ HYDRO CANADA INC., CANADIAN NATURAL RESOURCES LTD., CH2M HILL CANADA LTD., CHINA CHAMBER OF INTERNATIONAL COMMERCE, DELEGATION OF THE EUROPEAN UNION TO CANADA, EMBASSY OF SPAIN – ECONOMIC AND COMMERCIAL OFFICE, CINTASA, S.A., LAFARGE CANADA INC., SUNCOR ENERGY INC., SHANGUAI SHUANGYAN CHEMICAL EQUIPMENT MANUFACTURING CO., SHANGHAI YANDA ENGINEERING CO. LTD., YANDA CANADA LTD., YANDA (HAIMEN) HEAVY EQUIPMENT MANUFACTURING CO. LTD., LNG CANADA DEVELOPMENT INC.

Respondents

Docket:A-193-17

AND BETWEEN:

**SUNCOR ENERGY INC.,
FORT HILLS ENERGY L.P.**

Applicants

and

SUPERMETAL STRUCTURES INC., SUPREME GROUP LP, WAIWARD STEEL LP, CANADIAN INSTITUTE OF STEEL CONSTRUCTION, CH2M HILL CANADA LTD., CINTASA, S.A., LAFARGE CANADA INC., FLUOR CANADA LTD., CHINA CHAMBER OF INTERNATIONAL COMMERCE, CANADIAN NATURAL RESOURCES LTD., YANDA CANADA LTD., SHANGHAI SHUANGYAN CHEMICAL EQUIPMENT MANUFACTURING CO., SHANGHAI YANDA ENGINEERING CO. LTD., YANDA (HAIMEN) HEAVY EQUIPMENT MANUFACTURING CO. LTD, EMBASSY OF SPAIN, DELEGATION OF THE EUROPEAN UNION TO CANADA, ENBRIDGE PIPELINES INC., ANDRITZ HYDRO CANADA LTD., IRONWORKERS INTERNATIONAL, OCEAN STEEL & CONSTRUCTION LTD., WALTERS INC., LNG CANADA DEVELOPMENT INC.

Respondents

Docket:A-195-17

AND BETWEEN:

LNG CANADA DEVELOPMENT INC.

Applicant

and

CANADIAN INSTITUTE OF STEEL CONSTRUCTION, IRONWORKERS INTERNATIONAL, OCEAN STEEL & CONSTRUCTION LTD., SUPERMETAL STRUCTURES INC., SUPREME GROUP LP, WAIWARD STEEL LP, WALTERS INC., ANDRITZ HYDRO CANADA INC., CANADIAN NATURAL RESOURCES LTD., CH2M HILL CANADA LTD., ENBRIDGE PIPELINES INC., CHINA CHAMBER OF INTERNATIONAL COMMERCE,

CINTASA, S.A., LAFARGE CANADA INC., DELEGATION OF THE EUROPEAN UNION TO CANADA, EMBASSY OF SPAIN – ECONOMIC AND COMMERCIAL OFFICE, FLUOR CANADA LTD., SHANGUAI SHUANGYAN CHEMICAL EQUIPMENT MANUFACTURING CO., SHANGHAI YANDA ENGINEERING CO. LTD., SUNCOR ENERGY INC., YANDA CANADA LTD., YANDA (HAIMEN) HEAVY EQUIPMENT MANUFACTURING CO. LTD., AND THE ATTORNEY GENERAL OF CANADA

Respondents

REASONS FOR JUDGMENT

THE COURT

[1] In this consolidated proceeding, Fluor Canada Ltd. (Fluor), Suncor Energy Inc. and Fort Hills Energy L.P. (together Suncor), and LNG Canada Development Inc. (LNG Canada) apply for judicial review of the May 25, 2017 decision of the Canadian International Trade Tribunal (Tribunal) (Inquiry No. NQ-2016-004) under section 96.1 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15 (SIMA).

[2] The Tribunal was tasked with making an injury finding with respect to certain fabricated industrial steel components (FISC) (subject goods) from China, Korea and Spain that were being dumped, and, in the case of China, subsidized. For reasons issued on June 9, 2017, the Tribunal determined that the dumping and subsidizing of the subject goods from these countries caused injury to the domestic industry.

[3] Each of the applicants impugn the Tribunal's decision to refuse exclusions for specific goods, which the applicants requested on consent of the respondents who were potentially

affected. In addition, Fluor and LNG Canada indirectly challenge the Tribunal's injury determination on the basis that the Tribunal erred in its investigative procedure. In particular, they submit that it was unreasonable for the Tribunal to refuse to determine whether or not FISC encompassed in modules containing both FISC and non-FISC components (complex modules) are within the scope of its inquiry as subject goods (the scope determination). Finally, Fluor and Suncor submit that the Tribunal failed to provide a fair hearing and violated their procedural rights.

[4] With respect to the standard of review, this Court has recognized that the Tribunal's decisions should be reviewed with deference (*Essar Steel Algoma Inc. v. Jindal Steel and Power Limited*, 2017 FCA 166 at para. 15, 281 A.C.W.S. (3d) 762). The reasonableness principles that were applicable when this case was argued were as set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190. Since that time, the Supreme Court of Canada reconsidered these principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 59 Admin. L.R. (6th) 1. In this case, these applications would have been decided under *Vavilov* for substantially the same reasons as under *Dunsmuir*. *Vavilov* does not change the situation.

[5] For the reasons below, we have concluded that it was reasonable for the Tribunal to refuse to provide the scope determination, but that the Tribunal's decision to deny the exclusion requests was unreasonable. In our view, the exclusion decision should be set aside and referred back to the Tribunal for redetermination. We also find that it is not necessary to discuss the issues raised concerning procedural fairness.

I. The parties

[6] The applicants are Fluor, Suncor and LNG Canada.

[7] Fluor is an engineering, procurement and construction company based in Calgary, Alberta which commonly uses FISC as a construction material. Its clients are in the oil, gas, petrochemical, mining and power sectors.

[8] The Suncor applicants are importers and users of FISC in their operations and capital projects.

[9] LNG Canada is a joint venture company whose participants have substantial experience with liquefied natural gas (LNG). LNG Canada seeks to build and operate a LNG plant and marine export terminal facility near Kitimat, British Columbia. The plant would convert natural gas to liquid form for shipment to overseas markets.

[10] The only respondents who provided submissions in this Court are Supreme Group LP, Waiward Steel LP, Canadian Institute of Steel Construction, Supermetal Structures Inc., Ocean Steel & Construction Ltd., Walters Inc., and Ironworkers International (together, Canadian Producers). They collaborated to provide one set of submissions.

II. Relevant legislative scheme

[11] We will first provide a brief overview of the relevant steps in an anti-dumping and subsidizing inquiry under the SIMA.

[12] After the Canada Border Services Agency (CBSA) completes an initial dumping and subsidizing investigation under section 31 of the SIMA following a complaint by the domestic industry, the CBSA makes a preliminary determination of dumping or subsidization under subsection 38(1). In doing so, the CBSA must specify the goods to which the preliminary determination applies. As a result, subsection 38(1) confers exclusive jurisdiction on the CBSA to establish the goods to which its determination applies (subject goods) (*MAAX Bath Inc. v. Almag Aluminum Inc.*, 2010 FCA 62 at paras. 32, 35, 402 N.R. 107).

[13] After receiving notice of a preliminary determination under subsection 38(3), the Tribunal is required to conduct an inquiry under subsection 42(1) of the SIMA to determine if the importation of the subject goods has injured or is threatening to injure producers in Canada. The Tribunal must complete this inquiry within 120 days.

[14] It is well established that the Tribunal cannot amend the preliminary determination of the CBSA, and likewise the description of the subject goods contained therein (*MAAX Bath* at para. 35).

[15] Where there is difficulty in determining the application of the subject goods, the Tribunal has the authority to ascertain their scope (*MAAX Bath* at paras. 32–33; *DeVilbiss (Canada) Ltd. v. Canada (Anti-dumping Tribunal),* [1983] 1 F.C. 706 at 715, 44 N.R. 416 (F.C.A.); see also Tribunal Reasons at para. 36).

[16] If the inquiry leads the Tribunal to make a finding of injury, the Tribunal must also state to what goods its finding applies (SIMA, subsection 43(1)). This provision provides the implicit authorization for the Tribunal to grant exclusion requests for particular goods that would not cause injury.

[17] If there are outstanding questions with respect to whether specific goods are subject to the Tribunal's injury finding, then the CBSA addresses those upon importation in accordance with sections 56 to 60.1 of the SIMA (Tribunal Reasons at para. 159).

A. *Did the Tribunal err in refusing to provide the scope determination?*

[18] Two of the applicants, Fluor and LNG Canada, seek to have the Tribunal's decision to refuse a scope determination set aside. Their main argument is that the Tribunal is required by the SIMA to determine the scope of the subject goods, and to collect information on all subject goods as part of its injury inquiry.

[19] These applicants also submit that, even if the refusal is within the Tribunal's authority, the decision should in any event be set aside because of its adverse consequences. For example, Fluor comments on the difficulties that the resulting uncertainty has:

> 55. … Importers, and ultimately project owners, will bear the risk of this uncertainty and potentially pay punitive anti-dumping or countervailing duties for each importation. Each importer will have to repetitively re-litigate, potentially before the Tribunal, the very issues that the Tribunal declined to decide.

[20] In response, the Canadian Producers submit that the Tribunal's approach to the scope determination is reasonable.

[21] This issue involves understanding the legislative scheme, and in particular the Tribunal's role. As described below, under the SIMA, the Tribunal is required to investigate and determine whether or not the subject goods caused injury, or threaten to cause injury, to the domestic industry.

[22] The description of the subject goods as determined by the CBSA is at the centre of this dispute. The relevant part reads:

> … fabricated structural steel … whether assembled or partially assembled into modules, or unassembled …

[23] The Tribunal commented on what it described as a significant dispute among the parties as to the nature of complex modules, that is, modules into which FISC and non-FISC are both incorporated (Tribunal Reasons at paras. 34-44). The parties agreed that complex modules

themselves were not subject goods where the modules included significant amounts of non-FISC. The dispute was whether FISC incorporated into complex modules were subject goods. The Tribunal described the essence of the dispute (at para. 35) as to whether "the addition of non-FISC material to FISC changes the character of the good ...".

[24] The Tribunal explained that the positions of the parties on this issue were at extreme ends of the spectrum. For example, the Canadian Producers argued that FISC incorporated into complex modules was always subject goods. By contrast, the applicants argued that it never was. Faced with these opposing positions, the Tribunal concluded (at para. 37):

> … To the extent that FISC is incorporated into complex modules and may be transformed into a new product through the modularization process, the Tribunal is not convinced whether or not the FISC falls within the scope of the subject goods' definition. There are too many differing compositions, purposes and other characteristics within this general description of such goods for the Tribunal to accurately assess the issue.

[25] The Tribunal then commented that for the purposes of its injury finding it did not collect data on goods that were FISC within complex modules. It found at paragraph 39 that "… the importation of complex modules is a prospective concept …" and that it is not necessary to include FISC in such modules in its data because "there is no evidence that the minor amounts of FISC typically incorporated into process equipment would change the data in the investigation report in any meaningful manner."

[26] In our view, the Tribunal did not commit reviewable error in refusing to provide the scope determination and in not collecting data on FISC in complex modules as part of its injury

investigation. It was open to the Tribunal to direct its information gathering inquiry towards goods it reasonably viewed as being at issue.

[27] The applicable legislation in relevant part reads:

Tribunal to make inquiry	Enquête du Tribunal
42. (1) The Tribunal, forthwith after receipt pursuant to subsection 38(3) of a notice of a preliminary determination, shall make inquiry with respect to such of the following matters as is appropriate in the circumstances:	**42.** (1) Dès réception de l'avis de décision provisoire prévu au paragraphe 38(3), le Tribunal fait enquête sur celles parmi les questions suivantes qui sont indiquées dans les circonstances, à savoir :
(*a*) in the case of any goods to which the preliminary determination applies, as to whether the dumping or subsidizing of the goods	*a*) si le dumping des marchandises en cause ou leur subventionnement :
(i) has caused injury or retardation or is threatening to cause injury, or	(i) soit a causé un dommage ou un retard ou menace de causer un dommage,
(ii) would have caused injury or retardation except for the fact that provisional duty was imposed in respect of the goods;	(ii) soit aurait causé un dommage ou un retard sans l'application de droits provisoires aux marchandises;
…	[…]
Tribunal to make order or finding	Ordonnances ou conclusions du Tribunal
43. (1) In any inquiry referred to in section 42 in respect of any goods, the Tribunal shall, forthwith after the date of receipt of notice of a final determination of dumping or subsidizing with respect to any of those goods, but, in any event, not	**43.** (1) Dans le cas des enquêtes visées à l'article 42, le Tribunal rend, à l'égard de marchandises faisant l'objet d'une décision définitive de dumping ou de subventionnement, les ordonnances ou les conclusions indiquées dans chaque cas en y

later than one hundred and twenty days after the date of receipt of notice of a preliminary determination with respect to the goods, make such order or finding with respect to the goods to which the final determination applies as the nature of the matter may require, and shall declare to what goods, including, where applicable, from what supplier and from what country of export, the order or finding applies.	précisant les marchandises concernées et, le cas échéant, leur fournisseur et leur pays d'exportation. Il rend ces ordonnances ou conclusions dès réception de l'avis de cette décision définitive mais, au plus tard, dans les cent vingt jours suivant la date à laquelle il reçoit l'avis de décision provisoire.

[28] Judicial authorities interpret the SIMA to find that both the Tribunal and the CBSA have a role to play in determining the scope of the subject goods. The Tribunal's role was well described by the Canadian Producers in this hearing:

> 38. …the Tribunal carries out its inquiry by applying a balanced approach. On the one hand, the Tribunal uses (and may need to interpret) the CBSA's product definition in its injury inquiry to determine whether goods meeting that product definition have caused injury to domestic producers of 'like goods'. On the other, the Tribunal must refrain from redefining or amending the CBSA's product definition or ruling on the future subjectivity of future imports to its injury finding. The Tribunal is to be afforded considerable deference with respect to the balancing required to carry out its function.

[29] As for the argument of the applicants that the SIMA requires the Tribunal to make the requested scope determination, the language used in subsections 42(1) and 43(1) above does not support this. Instead, these provisions read as a whole suggest that it was Parliament's intention to provide leeway to the Tribunal to determine how the injury inquiry is to be conducted to accommodate the particular circumstances at issue. For example, subsection 42(1) specifies that the Agency must tailor its investigation to what is "appropriate in the circumstances." Similarly, subsection 43(1) directs the Agency to make an order "as the nature of the matter may require."

[30] The applicants also rely on this Court's decision in *DeVilbiss*, in which the Court concluded (at p. 715) that the Tribunal "had a duty to perform, which duty necessarily included the interpretation of the class of goods formulated in the preliminary determination."

[31] In our view, the Court in *DeVilbiss* did not conclude that the Tribunal always has to determine a class of goods. The focus is on the duty that the Tribunal has to perform. In this case, the Tribunal had a duty to make a finding regarding injury to the domestic industry and it had to set out the goods to which a finding of injury applies. This is exactly what the Tribunal did in this case. None of the parties dispute it made an injury finding. As for specifying the goods to which the injury finding applies, the Tribunal did this by referring to all subject goods, except goods exported by corporations whose exclusion requests were granted.

[32] As for the difficulty faced by the applicants by the Tribunal's refusal to rule, it must be considered that the Tribunal has only 120 days to make an injury finding on a complex matter involving many parties. The Tribunal should be given broad scope to conduct an inquiry that it considers appropriate in the circumstances.

[33] LNG Canada suggests that it would not be difficult for the Tribunal to make a determination based on criteria such as a certain percentage of non-FISC material. This approach appears at first blush to be reasonable but it is arbitrary and likely would result in impermissibly altering the subject goods as described by the CBSA.

[34] Finally, we would comment that the applicants' position is contrary to a previous finding of this Court. In *MAAX Bath* at paragraphs 38-39, the Court considered a refusal by the Tribunal to determine whether the subject goods include "goods generically described as aluminum parts." The Tribunal found that this determination should be made by the CBSA at the time of importation. The Court concluded that this finding fell within a permissible set of outcomes.

[35] In our view, it was not an error for the Tribunal in this case to adopt the same approach.

B. *Did the Tribunal err in refusing to grant the applicants' exclusion requests?*

[36] Each of the applicants requested that the Tribunal grant an exclusion for particular types of goods. All of the requests were made with the consent of Canadian Producers.

- Fluor's request encompasses FISC within complex modules where the gross weight of the module exceeds 250 metric tonnes, the module contains non-FISC elements accounting for at least 30 percent of the weight, and the goods are for use in projects along the coastline of British Columbia.

- LNG Canada's request is for FISC permanently assembled in complex modules to be used at its proposed LNG project in Kitimat, British Columbia.

- Suncor's request is for: (1) goods that are permanently assembled FISC components which constitute no more than 50 percent by weight of imported

> equipment, and the FISC weighs no more than 10,000 kg.; and (2) FISC components of electrical housing.

[37] Since the Canadian Producers consented to these requests, their submissions in this Court were limited to setting out the basis for the Tribunal's decision.

[38] The Tribunal first described general principles regarding the granting of exclusion requests (Tribunal Reasons at paras. 151-159). It stated that such requests are granted at the Tribunal's discretion where there is evidence that particular products have not caused injury. It also stated that consents by the domestic industry are not evidence of lack of injury. The Tribunal also commented that since it only has jurisdiction to grant exclusion requests for subject goods, the evidence must establish that the relevant goods are in fact subject goods.

[39] With respect to Suncor's exclusion requests, the Tribunal denied the request on the basis of the jurisdictional requirement above. In particular, the Tribunal concluded that more information was needed to determine that the products at issue were subject goods (i.e., not processed to the point that they were no longer FISC).

[40] The Tribunal then considered the requests by Fluor and LNG Canada, which both involved products to be used in projects in coastal British Columbia. The Tribunal concluded that these requests had the same jurisdictional flaw as Suncor's request, and in addition the requests were speculative and overly-general so that the Tribunal had no firm indication of what it was being asked to exclude.

[41] The applicants strenuously argued that the denial of these requests was extremely unfair. The applicants submitted that the denial of the requests could have significant adverse consequences for large projects such as those contemplated along the British Columbia coast. It is not a satisfactory answer, they suggest, to put off a determination of whether or not the goods are subject goods until the time of importation.

[42] In our view, the Tribunal's decision on the exclusion requests is unreasonable. The only reason explicitly stated by the Tribunal for denying the requests was that they may include goods that are not subject goods. The Tribunal described this as a problem of jurisdiction.

[43] In our view, the difficulty identified by the Tribunal as jurisdictional is in reality a minor technical matter. For example, LNG Canada suggested that the difficulty could have easily been avoided by including in the exclusion a phrase such as "if the goods are subject goods …". It was incumbent on the Tribunal in these circumstances to consider ways in which the problem could be addressed. It appears that the Tribunal did not do so, and accordingly its consideration of the exclusion requests was unreasonable.

[44] For this reason, the Tribunal's decision to deny the exclusion requests should be set aside and the matter referred back to the Tribunal for redetermination.

III. Conclusion

[45] In accordance with these reasons, we would make the orders described below.

[46] With respect to the applications by Fluor and LNG Canada, we would dismiss their requests to set aside the decision regarding the scope determination, and would allow their requests to set aside the denial of the exclusion requests. We would refer the matter of the exclusion requests back to the Tribunal for redetermination consistent with these reasons.

[47] With respect to Suncor's application concerning the exclusion requests, we would allow the application and set aside the Tribunal's decision to deny the applicants' exclusion request. We would refer the matter of the exclusion requests back to the Tribunal for redetermination consistent with these reasons.

[48] With respect to costs, we would not award costs since the Canadian Producers did not oppose the exclusion requests.

"David Stratas"
J.A.

"Donald J. Rennie"
J.A.

"Judith Woods"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-196-17 A-193-17 A-195-17
DOCKET:	A-196-17
STYLE OF CAUSE:	FLUOR CANADA LTD. v. SUPREME GROUP LP, *et al.*
AND DOCKET:	A-193-17
STYLE OF CAUSE:	SUNCOR ENERGY INC., FORT HILLS ENERGY L.P. v. SUPERMETAL STRUCTURES INC., *et al.*
AND DOCKET:	A-195-17
STYLE OF CAUSE:	LNG CANADA DEVELOPMENT INC. v. CANADIAN INSTITUTE OF STEEL CONSTRUCTION, *et al.*
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 11, 2018
REASONS FOR JUDGMENT BY:	THE COURT
DATED:	FEBRUARY 28, 2020

APPEARANCES:

Darrel Pearson Jesse Goldman Sabrina A. Bandali Julia Webster	FOR THE APPLICANT, FLUOR CANADA LTD. (A-196-17) AND RESPONDENT, FLUOR CANADA LTD. (A-193-17 AND A-195-17)
Paul M. Lalonde James M. Wishart	FOR THE APPLICANTS, SUNCOR ENERGY INC., FORT HILLS ENERGY L.P. (A-193-17) AND RESPONDENT, SUNCOR ENERGY INC. (A-196-17 AND A-195-17)
Geoff R. Hall John W. Boscariol Robert A. Glasgow	FOR THE APPLICANT, LNG CANADA DEVELOPMENT INC. (A-195-17)
R. Benjamin Mills Paul Conlin M. Drew Tyler	FOR THE RESPONDENTS, CANADIAN INSTITUTE OF STEEL CONSTRUCTION, IRONWORKERS INTERNATIONAL, OCEAN STEEL & CONSTRUCTION LTD., SUPERMETAL STRUCTURES INC.,SUPREME GROUP LP, WAIWARD STEEL LP AND WALTERS INC.
Cyndee Todgham Cherniak	FOR THE RESPONDENTS, CINTASA, S.A. AND LAFARGE CANADA
Daniel Hohnstein	FOR THE RESPONDENT, ANDRITZ HYDRO CANADA LTD.
Riyaz Dattu	FOR THE RESPONDENT, CANADIAN NATURAL RESOURCES LTD.

SOLICITORS OF RECORD:

Bennett Jones LLP Toronto, Ontario	FOR THE APPLICANT, FLUOR CANADA LTD. (A-196-17) AND RESPONDENT, FLUOR CANADA LTD. (A-193-17 AND A-195-17)
Dentons Canada LLP Toronto, Ontario	FOR THE APPLICANTS, SUNCOR ENERGY INC., FORT HILLS ENERGY L.P. (A-193-17) AND RESPONDENT, SUNCOR ENERGY INC. (A-196-17 AND A-195-17)
McCarthy Tétrault LLP Toronto, Ontario	FOR THE APPLICANT, LNG CANADA DEVELOPMENT INC. (A-195-17) AND RESPONDENT (A-196-17 AND A-193-17)
Conlin Bedard LLP Ottawa, Ontario	FOR THE RESPONDENTS, CANADIAN INSTITUTE OF STEEL CONSTRUCTION, IRONWORKERS INTERNATIONAL, OCEAN STEEL & CONSTRUCTION LTD., SUPERMETAL STRUCTURES INC.,SUPREME GROUP LP, WAIWARD STEEL LP AND WALTERS INC.
LexSage Professional Corporation Toronto, Ontario	FOR THE RESPONDENTS, CINTASA, S.A. AND LAFARGE CANADA
Tereposky & DeRose LLP Ottawa, Ontario	FOR THE RESPONDENT, ANDRITZ HYDRO CANADA LTD.
Osler, Hoskin & Harcourt LLP Toronto, Ontario	FOR THE RESPONDENT, CANADIAN NATURAL RESOURCES LTD.