

Ottawa, Monday, January 18, 1999

Reference No.: RE-98-002

IN THE MATTER OF a reference, under paragraph 34(1)(b) of the *Special Import Measures Act*, made by Aciers Francosteel Canada Inc., an importer, and Sollac, Aciers d'Usinor, an exporter from France, to the Canadian International Trade Tribunal;

AND IN THE MATTER OF an advice rendered by the Canadian International Trade Tribunal under section 37 of the *Special Import Measures Act*;

RESPECTING the dumping in Canada of certain flat hot-rolled carbon and alloy steel sheet products originating in or exported from France, Romania, the Russian Federation and the Slovak Republic.

ADVICE

The Canadian International Trade Tribunal hereby concludes that the evidence before the Deputy Minister of National Revenue discloses a reasonable indication that the dumping of certain flat hot-rolled carbon and alloy steel sheet products originating in or exported from France, Romania, the Russian Federation and the Slovak Republic has caused material injury or is threatening to cause material injury to the domestic industry.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Richard Lafontaine
Richard Lafontaine
Member

Michel P. Granger
Michel P. Granger
Secretary

Date of Advice: January 18, 1999

Tribunal Members: Pierre Gosselin, Presiding Member
Peter F. Thalheimer, Member
Richard Lafontaine, Member

Executive Director of Research: Ron Erdmann
Research Manager: Audrey Chapman

Counsel for the Tribunal: John L. Syme



Ottawa, Monday, January 18, 1999

Reference No.: RE-98-002

ADVICE rendered under section 37 of the *Special Import Measures Act* respecting:

**CERTAIN FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET
PRODUCTS ORIGINATING IN OR EXPORTED FROM FRANCE,
ROMANIA, THE RUSSIAN FEDERATION AND THE SLOVAK REPUBLIC**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
PETER F. THALHEIMER, Member
RICHARD LAFONTAINE, Member

STATEMENT OF REASONS

On December 3, 1998, on the basis of a properly documented complaint filed by Stelco Inc. of Hamilton, Ontario (Stelco), the Deputy Minister of National Revenue (the Deputy Minister) initiated an investigation into the alleged injurious dumping in Canada of certain flat hot-rolled carbon and alloy steel sheet products originating in or exported from France, Romania, the Russian Federation and the Slovak Republic.

On December 18, 1998, pursuant to paragraph 34(1)(b) of the *Special Import Measures Act*¹ (SIMA), counsel for a Canadian importer, Aciers Francosteel Canada Inc. (Francosteel), and an exporter from France, Sollac, Aciers d'Usinor (Sollac), referred to the Canadian International Trade Tribunal (the Tribunal) the question of whether the evidence before the Deputy Minister disclosed a reasonable indication that the dumping of the subject goods originating in or exported from France had caused material injury or retardation or was threatening to cause material injury to the domestic industry.²

Paragraph 34(1)(b) of SIMA requires the Tribunal to provide advice on whether evidence before the Deputy Minister discloses a reasonable indication that the dumping of the goods under investigation by the Deputy Minister has caused injury or retardation or is threatening to cause injury. Paragraph 37(b) of SIMA provides that the Tribunal shall render its advice on the question without holding hearings, on the basis of the information that was before the Deputy Minister when he reached his decision or conclusion on that question. Therefore, information that was not before the Deputy Minister when he made his decision cannot be considered by the Tribunal.

1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47, s. 164.

2. On December 30, 1998, an additional reference pursuant to paragraph 34(1)(b) of SIMA was made to the Tribunal by counsel for Thyssen Canada Limited (Thyssen), an importer of the subject goods from two of the subject countries. Thyssen referred to the Tribunal, for its consideration, the question of whether the evidence discloses a reasonable indication that the dumping or subsidizing of goods commonly known as skelp, skelp coil and/or skelp in coil used in the manufacture of tubes and being part of the subject goods has caused injury or retardation or is threatening to cause injury. On January 6, 1999, the Tribunal notified counsel for Thyssen that the Tribunal was already seized with the jurisdiction to render its advice in this matter in response to the reference made on December 18, 1998, by counsel for Francosteel and Sollac.

As noted, counsel for Francosteel and Sollac requested that the Tribunal provide advice on whether the evidence before the Deputy Minister disclosed a reasonable indication that the dumping of the subject goods originating in or exported from France had caused injury or was threatening to cause injury. However, in rendering its advice under section 37 of SIMA, the Tribunal must consider all of the goods that are subject to the Deputy Minister's investigation. Moreover, in considering the question of injury or reasonable indication of injury, it is the Tribunal's practice to cumulate the impact of dumped goods from all named sources and to examine their total effect on the domestic industry.^{3,4} This practice is grounded in the commercial reality that the effect on a domestic industry, if any, of dumped goods from more than one country is typically cumulative.

The Tribunal is of the view that there is no basis for considering French exports independently from the exports from the other named countries. Accordingly, the Tribunal has considered the cumulative impact of dumping of all goods specified by the Deputy Minister from all four named countries, including France, for purposes of this advice.

Paragraph 37(b) of SIMA provides that the Tribunal shall render its advice on the question without holding hearings, on the basis of the information that was before the Deputy Minister when he reached his decision or conclusion on that question. The Tribunal shall render its advice not later than 30 days after the reference is made.

The Deputy Minister defined the subject goods as follows:

Flat hot-rolled carbon and alloy steel sheet and strip, including secondary or non-prime material, originating in or exported from France, Romania, the Russian Federation and the Slovak Republic, in various widths from ¾" (19 mm) and wider, and

- (a) for product in coil form, in thicknesses from 0.054" to 0.625" (1.37 mm to 15.88 mm) inclusive,
 - (b) for product that is cut-to-length, in thicknesses from 0.054" up to but not including 0.187" (1.37 mm up to but not including 4.75 mm),
- excluding flat-rolled stainless steel sheet and strip.

There are five Canadian producers of certain flat hot-rolled carbon and alloy steel sheet products: Stelco of Hamilton; Dofasco Inc. (Dofasco) of Hamilton; Algoma Steel Inc. of Sault Ste. Marie, Ontario; Ipsco Inc. of Regina, Saskatchewan; and Ispat Sidbec Inc. of Montréal, Quebec. The complaint was filed by

3. For example, see *Polyphase Induction Motors Originating in or Exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America*, Canadian International Trade Tribunal, Inquiry No. CIT-5-88, *Finding*, April 28, 1989, *Statement of Reasons*, May 12, 1989; *Certain Stainless Steel Round Bar Originating in or Exported from the Federal Republic of Germany, France, Italy, Japan, Spain, Sweden, Taiwan and the United Kingdom*, Canadian International Trade Tribunal, Reference No. RE-97-001, *Advice and Statement of Reasons*, February 13, 1998; and *Refill Paper, Also Known As Filler Paper or Looseleaf Paper, Originating in or Exported from the Republic of Indonesia, and Notebooks with a Coiled or Spiral Binding, Originating in or Exported from the Republic of Indonesia and the Federative Republic of Brazil*, Canadian International Trade Tribunal, Inquiry No. NQ-96-001, *Finding*, September 27, 1996, *Statement of Reasons*, October 15, 1996.

4. Article 3 of the World Trade Organization *Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* expressly provides for the cumulative assessment of the effects of dumped imports.

Stelco. The other producers provided the Deputy Minister with letters of support and some additional evidence of injury, including production and shipment volumes of certain flat hot-rolled steel sheet products.

The Deputy Minister estimated margins of dumping on sales to Canada during the period from January 1 to September 30, 1998. A comparison of the constructed normal values with the export prices for the named countries estimated by the Department of National Revenue (Revenue Canada) indicated that approximately 95.8 percent of the imported goods reviewed were dumped. The weighted average margin of dumping was 20.4 percent of the total normal value of the goods.⁵

The Tribunal notes that, under section 35 of SIMA, at any time before making a preliminary determination of dumping, the Deputy Minister shall terminate an investigation where, among other things, he is satisfied that the actual or potential volume of dumped or subsidized goods from any named source is negligible,⁶ within the meaning of SIMA. The Tribunal notes that Revenue Canada performed the “negligibility” test on a preliminary basis for each of the named countries. Further, the Deputy Minister notes that the volume of imports and margins of dumping are only estimates and that he will be updating the data for the purpose of conducting the “negligibility” test for the preliminary determination of dumping.

The information before the Deputy Minister with respect to injury, when he made the decision to initiate the investigation, included a confidential complaint filed by Stelco; evidence of price suppression, price erosion, lost sales and allegations of sales lost to specific accounts by Stelco and Dofasco; the domestic production and shipment volumes of like goods for all domestic producers; data on the domestic market for 1996 to September 1998; some information concerning production capacity and capacity utilization; and an analysis of the complaint, prepared by officers of Revenue Canada.

Stelco submitted that the dumping of the subject goods is directly responsible for the following: (a) suppressed and eroded prices; (b) declines in net revenues; (c) reduced gross margins, operating profit and net income; (d) loss of market share; (e) lost sales; and (f) inventory accumulation. In its complaint to Revenue Canada, Stelco provided evidence and documentation in support of its allegations of injury to sales of like goods in the external or “open” market to third-party purchasers, such as service centres and end users.

The market for certain flat hot-rolled carbon and alloy steel sheet products consists of the domestic open-market shipments made by the Canadian producers and imports of certain flat hot-rolled carbon and alloy steel sheet products from the subject countries and non-subject countries. The information available to the Deputy Minister indicated that the market volume of the subject goods was approximately 4.8 million net tons in 1996, 5.6 million net tons in 1997 and 4.5 million net tons in the first nine months of 1998. The data

5. The estimated weighted average margin of dumping was 12.0 percent for France, 21.6 percent for Romania, 23.4 percent for the Russian Federation and 6.7 percent for the Slovak Republic.

6. Pursuant to subsection 2(1) of SIMA, “negligible” means, “in respect of the volume of dumped goods of a country, (a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods, except that (b) where the total volume of dumped goods of three or more countries, each of whose exports of dumped goods into Canada is less than three per cent of the total volume of goods referred to in paragraph (a), is more than seven per cent of the total volume of goods referred to in paragraph (a), the volume of dumped goods of any of those countries is not negligible.”

show that the share of these open-market shipments by domestic producers declined between 1996 and the first nine months of 1998.

Imports of the subject goods increased significantly in 1997 compared to 1996 and increased further during the first nine months of 1998. Stelco and Dofasco provided names of customers, the types of products sold to those customers and the selling prices for those products documenting instances of price suppression. The information before the Deputy Minister includes submissions that this price suppression was replaced by price erosion in the third quarter of 1998. In addition to the injury caused by price suppression and erosion, both Stelco and Dofasco claim that they lost sales to specific accounts.

Based on the information that was before the Deputy Minister, the Tribunal is of the view there is a reasonable indication that the domestic industry has suffered injury.

With regard to the issue of causality, Stelco maintains that the injury that it is experiencing began to worsen in the third quarter of 1998, when imports of certain flat hot-rolled carbon and alloy steel sheet products entered the Canadian market in significant volumes and at steadily decreasing prices. Stelco and Dofasco claim that they were forced to lower their prices or lose sales to the allegedly dumped flat hot-rolled carbon and alloy steel sheet products being sold on the Canadian market.

The information that was before the Deputy Minister shows a correlation among the industry's loss of market share, the increase in imports of the subject goods and the onset of price suppression, price erosion and lost sales. In the Tribunal's view, this correlation provides a reasonable indication that the dumping of the subject goods has caused or is threatening to cause injury.

In conclusion, based exclusively on a review of the information that was before the Deputy Minister, the Tribunal is satisfied that, for the purposes of sections 34 and 37 of SIMA, the evidence discloses a reasonable indication that the dumping of certain flat hot-rolled carbon and alloy steel sheet products originating in or exported from France, Romania, the Russian Federation and the Slovak Republic has caused or is threatening to cause injury.

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