

Ottawa, Wednesday, January 23, 1991

**Reference No.: RE-90-003**

IN THE MATTER OF a reference, under section 34 of the *Special Import Measures Act*, made by the Deputy Minister of National Revenue for Customs and Excise to the Canadian International Trade Tribunal;

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

RESPECTING the alleged dumping in Canada of stainless steel welded pipe originating in or exported from Taiwan in nominal pipe sizes ranging from 1/8" to 6" inclusive and with wall thicknesses varying from 0.060" to 0.315" (1.525 mm to 8.000 mm) inclusive.

**ADVICE**

The Tribunal hereby concludes that the evidence before the Deputy Minister of National Revenue for Customs and Excise discloses a reasonable indication that the alleged dumping of the subject goods from Taiwan has caused, is causing or is likely to cause material injury to the production in Canada of like goods.

*Date of Advice:* January 23, 1991

*Tribunal Members:* Kathleen E. Macmillan, *Presiding Member*  
Robert J. Bertrand, *Q.C.*, *Member*  
Sidney A. Fraleigh, *Member*

*Director of Research:* Réal Roy

*Research Officer:* Audrey Chapman



Ottawa, Wednesday, January 23, 1991

Reference No.: RE-90-003

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

**STAINLESS STEEL WELDED PIPE ORIGINATING IN OR EXPORTED  
FROM TAIWAN IN NOMINAL PIPE SIZES RANGING FROM 1/8" TO 6"  
INCLUSIVE AND WITH WALL THICKNESSES VARYING FROM 0.060" TO 0.315"  
(1.525 mm TO 8.000 mm) INCLUSIVE**

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member  
ROBERT J. BERTRAND, Q.C., Member  
SIDNEY A. FRALEIGH, Member

**ADVICE**

On December 24, 1990, the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister), having received a properly documented complaint from Associated Tube Industries, A Division of Samuel Manu-Tech Inc. (ATI), of Markham, Ontario, decided to initiate an inquiry into the alleged dumping of stainless steel welded pipe originating in or exported from Taiwan in nominal pipe sizes ranging from 1/8" to 6" inclusive and with wall thicknesses varying from 0.060" to 0.315" (1.525 mm to 8.000 mm) inclusive. In so doing, the Deputy Minister was of the opinion that the evidence did disclose a reasonable indication that the alleged dumping had caused, was causing or was likely to cause material injury to the production in Canada of like goods.

However, in view of the decision rendered by the Canadian International Trade Tribunal on December 14, 1990,<sup>1</sup> and the conclusion reached by the Tribunal that the domestic manufacturers of welded stainless steel pipe are not likely to suffer material injury if there is renewed dumping from the subject countries, the Deputy Minister referred to the Tribunal, under section 34(b) of the *Special Import Measures Act* (SIMA), the question as to whether the evidence with respect to that complaint discloses a reasonable indication that the dumping alleged has caused, is causing or is likely to cause material injury.

The Tribunal, pursuant to section 37 of SIMA, is required to render its advice on the question without holding any hearings, on the basis of the information that was before the Deputy Minister when she reached her decision and not later than 30 days after the reference was made.

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1. Review No. RR-90-002, Order rescinding the previous injury findings respecting stainless steel pipe from Japan, the United Kingdom, Sweden, the United States of America, the Federal Republic of Germany and the Republic of Korea.

The information provided to the Tribunal by the Deputy Minister included the documented complaint filed by ATI, the largest of the three manufacturers producing the subject goods in Canada, which contained data on domestic production, imports, pricing, profitability and detailed information with respect to Taiwan. The Deputy Minister also provided a copy of the September 1990 issue of the Steel Industry Annual Report (USITC Publication), a copy of the Tribunal's public pre-hearing staff report and the Tribunal's Order in Review No. RR-90-002.

Based on the information contained in the file, the Tribunal is of the opinion that the test of "reasonable indication" of material injury due to dumped imports has been met. Imports from Taiwan tripled their market share between 1988 and 1990, a time when the Canadian market was shrinking, and much of this penetration came at the expense of ATI. The complainant provided documented evidence of sales lost to imports from Taiwan and substantial price decreases throughout 1990 in response to competition from Taiwan. Furthermore, ATI reported employment reductions and a weakening in financial performance, the latter beginning in the third quarter of 1989.

In order to meet the requirements of section 37 of SIMA, the Tribunal must be satisfied that there is a reasonable indication of a causal link between the alleged dumped imports and the material injury suffered by the industry. The Tribunal observes a correlation between the injury indicators and the alleged dumping of the goods even though reduced sales, depressed prices and decreased production also could be attributed, at least in part, to an overall decline in demand for the subject goods and depressed market conditions. The Tribunal considers that this correlation gives a reasonable indication that the alleged dumping has caused material injury. However, full proof of causation goes beyond correlation, and can only be determined through a full injury inquiry.

Regarding the mention made by the Deputy Minister to the Tribunal's Order in Review No. RR-90-002, the Tribunal notes that the circumstances and evidence relating to this advice under section 37 differ from those before the Tribunal in the order made under section 76 of SIMA. First, Taiwan was not a subject country in the review case. The Tribunal's Order of December 14, 1990, concerned only the likelihood of material injury caused by renewed dumping by countries covered by the previous findings. Second, the information before the Deputy Minister concerning Taiwan was more recent than that available to the Tribunal in Review No. RR-90-002. In particular, evidence on lost sales, financial performance and price reductions showed a marked deterioration in the second half of 1990.

Finally, the Tribunal notes that the threshold of reasonable indication of material injury used in a reference is lower than the standard of proof required in a review where the question addressed by the Tribunal is whether the domestic industry is likely to be injured in a material way if the finding is rescinded.

The standard of proof, the nature, testing and weighing of the evidence, the introduction of contradictory evidence by opposing parties as well as the gathering of information and evidence from importers and domestic purchasers also make a review process very different from a reference process. A review involves the examination of all facts pertaining to the performance of domestic producers and the behaviour of exporters and importers in the domestic market during the period starting with the date of the finding under review. During that period, the existence of normal values and the

levying of anti-dumping/countervailing duties ensure that the dumping/subsidizing, if any, had no injurious effects on domestic production. In a review, any conclusion of the Tribunal on the question of likelihood of material injury upon the resumption of dumping must be based on facts, not on allegation, conjecture or remote possibility. Such conclusion must be based on a high degree of probability. While a review essentially involves conclusions as to future events, a reference requires the Tribunal to draw conclusions with respect to the past, present or future on the basis of information provided in the file.

In view of all the information provided and of the conclusions of its analysis, the Tribunal advises, pursuant to section 37 of SIMA, that the evidence discloses a reasonable indication that the alleged dumping of stainless steel welded pipe originating in or exported from Taiwan in nominal pipe sizes ranging from 1/8" to 6" inclusive and with wall thicknesses varying from 0.060" to 0.315" (1.525 mm to 8.000 mm) inclusive has caused, is causing or is likely to cause material injury to the production in Canada of like goods.

Kathleen E. Macmillan  
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Presiding Member

Robert J. Bertrand, Q.C.  
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Member

Sidney A. Fraleigh  
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Robert J. Martin  
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Secretary