



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## DECISION AND REASONS

Public Interest Inquiry  
No. PB-2008-001

Carbon Steel Welded Pipe

*Decision issued  
Friday, December 19, 2008*

*Reasons issued  
Friday, January 16, 2009*

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IN THE MATTER OF representations as to whether there are reasonable grounds to consider that the imposition, in whole or in part, of anti-dumping and countervailing duties on imports of carbon steel welded pipe originating in or exported from the People's Republic of China, as a result of the Canadian International Trade Tribunal's finding dated August 20, 2008, in Inquiry No. NQ-2008-001 conducted under section 42 of the *Special Import Measures Act*, would not or might not be in the public interest under section 45 of the *Special Import Measures Act*.

## DECISION

Pursuant to section 45 of the *Special Import Measures Act*, the Canadian International Trade Tribunal is of the opinion that there are no reasonable grounds to consider that the imposition of anti-dumping and countervailing duties, or the imposition of such duties in the full amount provided for by the *Special Import Measures Act*, in respect of the goods referred to in the Canadian International Trade Tribunal's finding in Inquiry No. NQ-2008-001 would not or might not be in the public interest. Accordingly, the Canadian International Trade Tribunal will not initiate a public interest inquiry into this matter.

James A. Ogilvy  
James A. Ogilvy  
Presiding Member

Ellen Fry  
Ellen Fry  
Member

Serge Fréchette  
Serge Fréchette  
Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

The statement of reasons will be issued at a later date.

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Lakeside Steel Corporation

Prudential Steel Ltd.

Evraz Inc. NA Canada and Evraz Inc. NA Canada West

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## STATEMENT OF REASONS

### BACKGROUND

1. On August 20, 2008, in Inquiry No. NQ-2008-001, the Canadian International Trade Tribunal (the Tribunal) found, pursuant to subsection 43(1) of the *Special Import Measures Act*,<sup>1</sup> that the dumping and subsidizing of carbon steel welded pipe originating in or exported from the People's Republic of China (China) (the subject goods) had caused injury to the domestic industry.
2. The Tribunal excluded the following goods from its finding:
  - carbon steel welded pipe in the nominal pipe size of 1 inch, meeting the requirements of specification ASTM A53, Grade B, Schedule 10, with a black or galvanized finish, and with plain ends, for use in fire protection applications;
  - carbon steel welded pipe in nominal pipe sizes of 1/2 inch to 2 inches inclusive, produced using the electric resistance welding process and meeting the requirements of specification ASTM A53, Grade A, for use in the production of carbon steel pipe nipples; and
  - carbon steel welded pipe in nominal pipe sizes of 1/2 inch to 6 inches inclusive, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles.
3. Subsection 45(1) of *SIMA* provides that the Tribunal shall, on its own initiative or on the request of an interested person, initiate a public interest inquiry if it is of the opinion that there are reasonable grounds to consider that the imposition of anti-dumping and countervailing duties, or the imposition of such duties in the full amount, would not or might not be in the public interest.
4. As part of its injury finding notification process, on August 20, 2008, the Tribunal issued a letter which indicated that interested persons who were of the view that the imposition of anti-dumping and countervailing duties, or the imposition of such duties in the full amount, would not or might not be in the public interest could, if they so wished, make a request to the Tribunal to initiate a public interest inquiry. The Tribunal further indicated that interested persons had to file their representations with the Tribunal not later than October 6, 2008.
5. On October 10, 2008, the Tribunal notified all those who received a copy of its injury finding in Inquiry No. NQ-2008-001 that it had received properly documented requests for a public interest inquiry from Protin Import Ltd. (Protin), an importer of carbon steel welded pipe, and the Canadian Fence Industry Association, Western Chapter (CFIA), whose members include users, importers and distributors of carbon steel welded pipe. The Tribunal also indicated that, if interested persons wished to submit reply submissions to the Tribunal, they had to be filed not later than October 31, 2008, and that these reply submissions should address the facts and arguments contained in Protin's and the CFIA's requests and provide any other information that would assist the Tribunal in forming an opinion about whether there were reasonable grounds to consider the initiation of a public interest inquiry.

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1. R.S.C. 1985, c. S-15 [*SIMA*].

6. The Tribunal received submissions opposing the initiation of a public interest inquiry from ArcelorMittal Tubular Products Montréal Inc. (ArcelorMittal), Lakeside Steel Corporation (Lakeside), Quali-T-Group ULC (Quali-T-Group), Prudential Steel Ltd. (Prudential), and Evraz Inc. NA Canada and Evraz Inc. NA Canada West. The Tribunal notes that, in Inquiry No. NQ-2008-001, it determined that ArcelorMittal, Lakeside, Quali-T-Group and Prudential constituted the domestic industry for carbon steel welded pipe.

## **PUBLIC INTEREST CONSIDERATIONS**

7. For the Tribunal to initiate a public interest inquiry pursuant to section 45 of *SIMA*, the Tribunal must be of the opinion that there are reasonable grounds to consider that the imposition of anti-dumping and countervailing duties on imports of carbon steel welded pipe from China, or the imposition of such duties in the full amount, would not or might not be in the public interest.

8. The Tribunal notes that, while it considered Protin's and the CFIA's requests to be properly documented, this did not imply a judgment on whether the Tribunal would initiate a public interest inquiry, or if so, what it might decide concerning the substance of the requests. The requirement that requests be properly documented simply ensures that the Tribunal has, in its possession, sufficient information to enable it to decide whether there are reasonable grounds to consider that the imposition of anti-dumping and countervailing duties, or the imposition of such duties in the full amount, would not or might not be in the public interest.

9. The Tribunal also notes that, depending on the circumstances of the case, "public interest" may refer to the interests of the public at large, or to those of a segment of that public. In an appropriate case, contrary to what has been argued by the domestic industry, geography could be a defining element of the relevant segment of the public, provided the effects of the imposition of anti-dumping and/or countervailing duties on supply, competition and competitiveness in a particular region are sufficient, on their own, to represent a "public interest". Public interest has also been interpreted by the Tribunal to refer to the welfare of downstream industries or downstream customers. The current requests appear to address issues pertaining to the geographical location of the requesters, as well as to the welfare of their downstream customers.

10. In order to make its decision regarding whether to initiate a public interest inquiry, the Tribunal took into account the factors in subsection 40.1(3) of the *Special Import Measures Regulations*,<sup>2</sup> which are prescribed for the purposes of a public interest inquiry. These factors include the availability of goods of the same description from countries or exporters to which the order or finding does not apply; the effect that the imposition of the duties has had or is likely to have on competition in the domestic market; the effect on producers in Canada that use the goods as inputs in the production of other goods and in the provision of services; the effect on competitiveness by limiting access to goods that are used as inputs in the production of other goods and in the provision of services, or by limiting access to technology; and the effect that the non-imposition of the duties, in whole or in part, is likely to have on domestic producers of inputs used in the production of like goods.

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2. S.O.R./84-927.

11. In support of a public interest inquiry, Protin argued that the imposition of substantial anti-dumping and countervailing duties<sup>3</sup> had drastically altered the market, significantly lessening competition in Western Canada, and had caused damage to end users in the mechanical, plumbing, general fabrication, structural construction, fencing, fire protection and irrigation industries as a result of excessive price increases and product shortages. According to Protin, it was difficult to replace the complete range of subject goods with carbon steel welded pipe from other countries. It alleged that producers in Central Canada are unable to supply the complete range of carbon steel welded pipe and that, historically, the requirements of the mechanical, structural construction, fire protection and fencing industries in Western Canada have been met by imported carbon steel welded pipe. The CFIA contended that high input costs had caused its members' products to become uncompetitive with imports of fabricated fence panels from Asia, to the detriment of Canadian manufacturers.

12. Parties opposed argued that Protin and the CFIA had failed to establish that there were reasonable grounds for the Tribunal to consider that the imposition of anti-dumping and countervailing duties would not be in the public interest and that, accordingly, there was no justification for the Tribunal to initiate a public interest inquiry. They submitted that Protin's and the CFIA's requests identified only narrow, regional commercial interests of parties that had been participants in the injury inquiry and not a broad-based public interest, which must be present prior to the initiation of a public interest inquiry. Further, parties opposed submitted that carbon steel welded pipe is readily available from several countries other than China, including the United States, as well as from several domestic producers. They rejected the argument that there were inadequate supplies in Western Canada and referred to the Tribunal's decision in Inquiry No. NQ-2008-001 in which it concluded that domestic producers had the capacity and interest to produce carbon steel welded pipe for the western market. They also rejected the argument that competitiveness had been negatively affected and submitted that price increases seen after the imposition of anti-dumping or countervailing duties often reflect the re-establishment of a level playing field and are not an indication that the public interest is likely to be harmed. In any event, in this case, the price increases were part of a global phenomenon, attributable to dramatic increases in the cost of steel inputs, which had begun to decline in the fourth quarter of 2008. Finally, parties opposed submitted that a reduction in duties could negatively affect domestic producers of hot-rolled sheet, the prime input in the production of carbon steel welded pipe.

13. Having carefully considered the submissions received, as well as the information on the record of Inquiry No. NQ-2008-001, the Tribunal will not initiate a public interest inquiry.

14. When the Tribunal finds injury in an inquiry conducted pursuant to section 42 of *SIMA*, the consequent anti-dumping and/or countervailing duties become the normal state of affairs, or the default position, with respect to all goods to which the finding applies. It is this set of conditions that a requester for a public interest inquiry seeks to have varied by means of a recommendation from the Tribunal to the Minister of Finance. It is therefore incumbent on the requester to present at least a *prima facie* case to the Tribunal that the initiation of a public interest inquiry is appropriate. Such a case must relate to the effects that the imposition of anti-dumping and/or countervailing duties have had or might have on the public interest.

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3. On July 21, 2008, in its final determination, the Canada Border Services Agency determined that the weighted average margin of dumping, expressed as a percentage of the export price, was 141 percent and that the weighted average amount of subsidy, expressed as a percentage of the export price, was 73 percent.

15. In the present instance, neither request provided quantitative information on the volumes or pricing of the requesters' imports of carbon steel welded pipe. More importantly, neither request made its case for negative effects on the public interest, either current or anticipated, based on the volumes or prices of the requesters' actual or anticipated sales of carbon steel welded pipe or goods made with carbon steel welded pipe. Even though the argument was made that prices of carbon steel welded pipe are or will be higher on a percentage basis, the evidence appears to indicate that the base to which the percentage was applied was the dumped and subsidized price of the subject goods (i.e. prior to the Tribunal's injury finding), rather than the price of carbon steel welded pipe in the market in general. It is to be expected that, after a finding, prices on goods imported from a country found to be dumping and/or subsidizing will increase and that, as a result, these goods may be more difficult or less desirable to import. The question is whether, given all the circumstances in the market, the negative effects of the imposition of the anti-dumping and/or countervailing duties on market prices and availability is too great to be in the public interest.

16. Further, there was very little evidence to indicate that the requesters' customers—a broader representation of the "public", but still only a small portion of the market—would be unable to adjust to the new prices for carbon steel welded pipe. The Tribunal normally expects that the market will adjust as necessary to higher prices and new sources of supply following an injury finding, and there was no concrete evidence offered to counter this view in the present instance.

17. With respect to the availability of carbon steel welded pipe, the requesters have not made a persuasive case for restricted availability. Identical or substitutable products are available from Canadian producers, and there is clear evidence in the requesters' own submissions that carbon steel welded pipe is available from foreign sources other than China. This is supported by the information on the record in Inquiry No. NQ-2008-001, which shows that carbon steel welded pipe was imported from at least seven non-subject countries during the Tribunal's period of investigation.<sup>4</sup> As well, the evidence on the record in this case also indicates that carbon steel welded pipe continues to be available from numerous sources other than China.

18. As for competition in the Canadian market, there was no persuasive evidence to show that domestically produced carbon steel welded pipe was not entering or was not capable of entering the geographic areas of concern to the requesters to compete with product from other sources. On the contrary, the evidence in Inquiry No. NQ-2008-001 was that Canadian producers were represented in those regions, but that their sales were experiencing increasing difficulty because of the presence of the dumped and subsidized goods.

19. Finally, the Tribunal notes that there were numerous requests for exclusions that it considered as part of Inquiry No. NQ-2008-001. Where it denied those requests, it gave full reasons. The Tribunal finds that the submissions before it in the present instance overlap to a certain extent with some of the requests for exclusions that it denied previously. In the Tribunal's view, it is not appropriate for parties to attempt to use a public interest inquiry as a means of revisiting those decisions.<sup>5</sup>

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4. Importers' questionnaire replies found under collective Tribunal Exhibit NQ-2008-001-14, Administrative Record, Vol. 5; Tribunal Exhibit NQ-2008-001-24.14, Administrative Record, Vol. 1.

5. See, for example, *Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (3 September 1999), PB-99-001 (CITT) at 8.



**CONCLUSION**

20. For the above reasons, the Tribunal is of the opinion that there are no reasonable grounds to consider that the imposition of anti-dumping and countervailing duties, or the imposition of such duties in the full amount provided for by *SIMA*, in respect of the subject goods would not or might not be in the public interest. Accordingly, the Tribunal will not initiate a public interest inquiry into this matter.

James A. Ogilvy  
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Presiding Member

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