



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

## DETERMINATION AND REASONS

Preliminary Injury Inquiry  
No. PI-2005-002

Cross-linked Polyethylene Tubing

*Determination issued  
Tuesday, May 2, 2006*

*Reasons issued  
Wednesday, May 17, 2006*

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IN THE MATTER OF a preliminary injury inquiry, under subsection 34(2) of the *Special Import Measures Act*, respecting:

**THE DUMPING OF CROSS-LINKED POLYETHYLENE TUBING  
ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF  
AMERICA**

**PRELIMINARY DETERMINATION OF INJURY**

The Canadian International Trade Tribunal, under the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping of single or multilayer cross-linked polyethylene tubing in nominal tubing sizes up to and including 1 inch or the metric equivalent, excluding cross-linked polyethylene tubing with an oxygen barrier layer, originating in or exported from the United States of America has caused injury or retardation or is threatening to cause injury.

This preliminary injury inquiry is pursuant to the notification, on March 3, 2006, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping of the above-mentioned goods has caused injury or retardation or is threatening to cause injury.

Ellen Fry

Ellen Fry  
Presiding Member

Zdenek Kvarda

Zdenek Kvarda  
Member

Serge Fréchette

Serge Fréchette  
Member

Hélène Nadeau

Hélène Nadeau  
Secretary

The statement of reasons will be issued within 15 days.

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## STATEMENT OF REASONS

### BACKGROUND

1. On May 2, 2006, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,<sup>1</sup> the Canadian International Trade Tribunal (the Tribunal) determined that there was evidence that disclosed a reasonable indication that the dumping of single or multilayer cross-linked polyethylene tubing in nominal tubing sizes up to and including 1 inch or the metric equivalent (PEX tubing), excluding cross-linked polyethylene tubing with an oxygen barrier layer, originating in or exported from the United States of America (the subject goods) had caused injury or retardation or was threatening to cause injury.

2. On March 3, 2006, the President of the Canada Border Services Agency (CBSA) initiated an investigation into the alleged injurious dumping of the subject goods following a complaint filed on February 7, 2006, by Vanguard Piping Systems (Canada) Inc. (Vanguard). On March 17, 2006, the CBSA issued a statement of reasons for the initiation of its investigation.

3. The CBSA estimated the margins of dumping for the period from January 1 to December 31, 2005. Its analysis indicated that approximately 96 percent of the goods imported into Canada during its period of investigation were dumped by margins ranging from 2 to 173 percent, with an estimated overall weighted average margin of dumping of 75 percent, expressed as a percentage of the export price. The estimated volume of the dumped goods was not negligible, and the estimated weighted average margin of dumping was not insignificant.

### SUBMISSIONS

#### Domestic Industry

4. Vanguard submitted that the dumping of the subject goods has caused and threatens to cause injury to the domestic industry. In support of its allegations, it provided evidence that it had experienced price erosion and suppression, suppressed revenues and sales volumes, increased rebates and incentives to customers, lost sales, loss of market share, increased unit costs, reduced margins and profits, and underutilized capacity. It also submitted, in the alternative, that the subject goods threatened to cause injury to the domestic industry if the dumping were allowed to continue. Bow Plastics Ltd. (Bow), another large Canadian manufacturer of PEX tubing, made similar submissions and provided information on its production and sales, as well as evidence of injury.

5. With respect to the issue of determining what constitutes the domestic industry, the record shows that, in addition to Vanguard and Bow, there are potentially four other Canadian producers of PEX tubing, namely, Heatlink Canada (Heatlink), IPEX Inc. (IPEX), Uponor Canada Inc. (Uponor) and Watts Industries (Canada) Inc. (Watts). Bow, Heatlink and Watts indicated to the CBSA that they supported Vanguard's complaint. Only IPEX wrote to the CBSA to oppose the complaint. Uponor did not make its position known.<sup>2</sup>

#### Parties Opposed to the Complaint

6. No submissions were received by the Tribunal from parties opposed to the complaint.

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

2. Administrative Record, Vol. 1A at 197.

## ANALYSIS

### Legislative Framework

7. The Tribunal's mandate at the preliminary stage of an injury inquiry is set out in subsection 34(2) and section 37.1 of *SIMA*, which require the Tribunal to determine whether the evidence discloses a reasonable indication that the dumping of the subject goods "has caused injury or retardation or is threatening to cause injury". In making this determination, the Tribunal took into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*<sup>3</sup> for the purposes of determining whether the dumping has caused injury or retardation or is threatening to cause injury. The Tribunal also considered whether a causal relationship exists between the dumping and the injury or retardation or threat of injury and whether any factors other than the dumping caused the injury or retardation or were threatening to cause injury, in accordance with subsection 37.1(3) of the *Regulations*.

8. Subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry" and "retardation" as "material retardation of the establishment of a domestic industry". It also defines "domestic industry" as the domestic producers as a whole of the like goods or whose collective production constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers. Therefore, the Tribunal must identify the like goods and the domestic industry that produces those goods before addressing the issues of injury, retardation or threat of injury.

### Like Goods

9. The Tribunal notes that, in initiating its investigation, the CBSA defined the subject goods as single or multilayer cross-linked polyethylene tubing in nominal tubing sizes up to and including 1 inch or the metric equivalent, excluding cross-linked polyethylene tubing with an oxygen barrier layer, originating in or exported from the United States. In considering the issue of like goods, the Tribunal considers a number of factors, including the physical characteristics of the goods, their substitutability, and whether they fulfil the same customer needs. Vanguard submitted that the subject goods and the goods produced by the domestic industry are virtually identical and interchangeable and that they compete directly with each other in the Canadian marketplace.

10. In view of the evidence on the record, the Tribunal finds that the PEX tubing produced in Canada is a like good to the subject goods.

### Domestic Industry

11. Based on the evidence on the record, the Tribunal finds that the collective production of like goods by Vanguard and Bow represents sufficient production of like goods to constitute a major proportion of the total domestic production of the like goods.<sup>4</sup>

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3. S.O.R./84-927 [*Regulations*].

4. Administrative Record, Vol. 1 at 28, Vol. 2 (protected) at 362.

### Volume of Dumped Goods

12. Vanguard submitted that the volume of imports of the subject goods increased dramatically in the Canadian market beginning in 2003 and has continued to increase. Bow made similar claims about the significant increase in imports of the subject goods in recent years. These allegations were not contradicted. With respect to estimating the volume of imports of PEX tubing, the Tribunal notes that publicly available statistics are not helpful because they include a wide range of other products. Accordingly, the CBSA estimated the volume of imports of the subject goods based on an analysis of actual import data obtained from its internal information system and from customs entry documentation. Using this approach, the CBSA estimated that, in 2005, the United States accounted for 75 percent of the total volume of imports of PEX tubing into Canada. Evidence on the confidential record shows an increase in the volume of imports of the subject goods between 2004 and 2005,<sup>5</sup> based on the CBSA's estimates.

### Effect on the Price of Like Goods

13. As to the effect of the subject goods on the price of like goods, Vanguard submitted that the presence of the low-priced subject goods in the Canadian market resulted in decreases in the price of domestic PEX tubing.<sup>6</sup> Similarly, Bow submitted that, since the arrival of the subject goods in Canada, price competition has been significant. PEX tubing is a highly price-sensitive commodity product and, because of the transparency of the market, customers routinely call their suppliers with a competitor's quote in order to obtain lower prices. Vanguard provided evidence of the prices at which the subject goods were being sold in the Canadian market.<sup>7</sup> The Tribunal notes that a comparison of these prices with comparable domestic prices for the same period<sup>8</sup> suggests that the price of the subject goods was undercutting the price of domestic PEX tubing.

14. Vanguard claimed that price erosion began in Quebec in 2003 and continued in Ontario in the middle of the following year and that, in order to retain customers and meet the competition from the subject goods, it had to lower its prices. Vanguard's declining average net selling prices for the period 2002 to the first three quarters of 2005 support its claim of price erosion.<sup>9</sup> Bow also provided information that showed that its net unit selling prices had eroded during the period.<sup>10</sup> Further, Vanguard submitted that it had experienced price suppression due to the presence of the low-priced subject goods, which negatively affected its ability to respond to increased costs.<sup>11</sup> The Tribunal notes that there is evidence on the record as to a significant price increase in polyethylene, an important raw material used in the manufacture of PEX tubing.<sup>12</sup>

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5. Administrative Record, Vol. 2 (protected) at 368.

6. Administrative Record, Vol. 1 at 35-37, 50, Vol. 2 (protected) at 44.

7. Administrative Record, Vol. 2 (protected) at 205.

8. *Ibid.* at 208, 331.

9. *Ibid.* at 30.

10. Administrative Record, Vol. 2A (protected) at 12.

11. Administrative Record, Vol. 2 (protected) at 44.

12. Administrative Record, Vol. 1A at 254-55, 257-58, Vol. 2 (protected) at 296.

15. With respect to price erosion, Vanguard provided evidence with respect to several accounts where it was forced to lower its prices in order to retain market share because of low-priced subject goods.<sup>13</sup> Bow also cited certain accounts where it had to lower its prices to meet the competition from the subject goods.<sup>14</sup>

16. PEX tubing is sold on the basis of a list price that is subsequently discounted through the application of rebates. As well, manufacturers of PEX tubing sometimes provide incentives to customers. Vanguard expressed concern that increases in rebate rates are a growing trend and that these rates are spiralling upward as a result of the presence of the subject goods. Vanguard provided evidence that it was forced to increase its rebates and incentives to keep its customers in the face of the practices of a certain U.S. exporter.<sup>15</sup> Similarly, Bow provided evidence that showed the increasing value of rebates offered between 2002 and 2004.<sup>16</sup>

### **Impact on the Domestic Industry and Other Relevant Factors**

17. With respect to the impact of the subject goods on the state of the domestic industry, Vanguard provided evidence that the presence of the subject goods had caused it to lose certain major accounts.<sup>17</sup> Bow also submitted that it had lost accounts due to imports of the subject goods.<sup>18</sup>

18. Furthermore, these lost sales on the part of domestic producers resulted in a loss of market share at a time when the Canadian market for PEX tubing was expanding because of the conversion from copper piping to PEX tubing and the increase in housing construction. The Tribunal notes that PEX tubing is a relatively new product that is still gaining acceptance in Canada, especially in the large Ontario market.<sup>19</sup>

19. Vanguard invested in a third production line in 2005 in anticipation of increased market demand. However, Vanguard submits that the increase in demand did not materialize because of the negative impact of imports of the subject goods and it provided data that indicate that it continues to suffer from underutilized capacity.<sup>20</sup>

20. Vanguard provided financial data for the fiscal years 2002 to 2004 that show that profit margins on PEX tubing declined by a significant percentage between 2002 and the first nine months of 2005.<sup>21</sup> Bow submitted that the dumping had had a severe negative impact on gross and net profitability.<sup>22</sup>

21. Furthermore, the Tribunal notes the very significant margin of dumping estimated by the CBSA.

### **Causation**

22. Based on the information on the record to date, the Tribunal is of the view that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused significant lost sales, price erosion and price suppression, and resultant negative financial outcomes for the domestic industry.

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13. Administrative Record, Vol. 2 (protected) at 29-31.

14. Administrative Record, Vol. 2A (protected) at 8, 12.

15. Administrative Record, Vol. 1 at 40-42.

16. Administrative Record, Vol. 2A (protected) at 6, 12.

17. Administrative Record, Vol. 2 (protected) at 40-41.

18. Administrative Record, Vol. 2A (protected) at 8.

19. Administrative Record, Vol. 1A at 236-237, Vol. 2 (protected) at 44.

20. Administrative Record, Vol. 2 (protected) at 46-48, 41.

21. *Ibid.* at 372.

22. Administrative Record, Vol. 1A at 242.



**CONCLUSION**

23. In light of the foregoing, pursuant to subsection 37.1(1) of *SIMA*, the Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury or retardation or is threatening to cause injury.

Ellen Fry  
Ellen Fry  
Presiding Member

Zdenek Kvarda  
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