



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2009-001

Mattress Innerspring Units

*Determination issued
Friday, June 26, 2009*

*Reasons issued
Monday, July 13, 2009*

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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 MATTRESS INNERSPRING UNITS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

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 mattress innerspring units, with or without edge guards, used in the manufacture of innerspring mattresses, originating in or exported from the People's Republic of China has caused injury or retardation or is threatening to cause injury.

This preliminary injury inquiry is pursuant to the notification, on April 27, 2009, 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.

Serge Fréchette
Serge Fréchette
Presiding Member

Ellen Fry
Ellen Fry
Member

André F. Scott
André F. Scott
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On April 27, 2009, following a complaint filed on March 6, 2009, by Globe Spring & Cushion Co. Ltd. (Globe Spring), the President of the Canada Border Services Agency (CBSA) initiated an investigation into the alleged injurious dumping of mattress innerspring units, with or without edge guards, used in the manufacture of innerspring mattresses, originating in or exported from the People's Republic of China (China) (the subject goods).
2. On April 28, 2009, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.
3. The complaint is supported by two other producers, Simmons Canada Inc. (Simmons) and Marshall Mattress Company Limited (Marshall), which produce mattress innerspring units solely for their own use in manufacturing mattresses.¹
4. On June 26, 2009, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,² the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury. These are the reasons for the Tribunal's determination.

CBSA'S DECISION TO INITIATE AN INVESTIGATION

5. The CBSA was of the opinion that there was evidence that the subject goods had been dumped, as well as evidence that disclosed a reasonable indication that the dumping had caused injury or was threatening to cause injury. Accordingly, in accordance with subsection 31(1) of *SIMA*, the CBSA initiated an investigation on April 27, 2009.
6. In coming to its decision to initiate an investigation, the CBSA used information with respect to the volume of dumped goods for the period from January 1 to December 31, 2008.
7. The CBSA was of the view that almost all the subject goods had been dumped, with an overall weighted average margin of dumping of 35.7 percent.
8. The CBSA estimated that the subject goods accounted for 59.3 percent of mattress innerspring units imported into Canada from January 1 to December 31, 2008. As a result, the CBSA was of the opinion that the estimated volume of the dumped goods was not negligible and that the estimated overall weighted average margin of dumping was not insignificant.³

1. Simmons and Marshall submitted letters to the CBSA in support of the complaint. Simmons made a submission to the Tribunal in support of the complaint.
2. R.S.C. 1985, c. S-15 [*SIMA*].
3. Administrative Record, Vol. 1A at 121.

SUBMISSIONS ON INJURY

Domestic Producers Supporting the Complaint

9. Globe Spring submitted that the dumping of the subject goods had caused and threatened to cause injury to the domestic industry. In support of its allegations, Globe Spring provided evidence of increased volumes of dumped goods, reduced market share, loss of sales, price undercutting, price depression, price suppression, underutilization of capacity, reduction in employment, loss of revenue and reduction in profitability.

10. Globe Spring submitted, among other things, that imports of the subject goods increased significantly throughout the period from 2005 to 2008 and that they accounted for an increasing share of all import sources of such products in Canada. On the questions of price depression and price suppression, Globe Spring and Simmons indicated that unit pricing achieved by the domestic industry fell between 2005 and 2006 and that price increases were constrained despite the rapid increases in raw material costs in 2008. Globe Spring also provided examples of alleged injury in the form of lost sales due to the low pricing of the subject goods. It submitted that the presence of the subject goods caused significant deterioration in its net sales revenue between 2005 and 2007 as a result of sales lost to the low-priced subject goods. Finally, Globe Spring submitted that employment at its plants had declined every year since 2005.

11. Concerning the threat of injury, Globe Spring submitted that there will be a diversion of mattress innerspring units into Canada due to the U.S. anti-dumping finding on uncovered innerspring units from China. As well, the dumping of the subject goods in a Canadian market that is weak due to the current economic situation will intensify the pressure on Globe Spring to stay competitive with the mattress manufacturers that use the subject goods.

12. Simmons took the position that there has been injury to both domestic production for the merchant market and domestic production for further processing and that the Tribunal should therefore determine that there is a reasonable indication of injury to the domestic industry as a whole.

Parties Opposing the Complaint

13. The Tribunal received submissions from five parties opposed to the complaint: Pacific Bedspring Assemblies Ltd., Springwall Sleep Products Inc., Restwell Sleep Products, Spring Air Sommex Corporation and Owen & Company Limited (Owen).

14. Parties opposed submitted that Globe Spring had not supported its claim on injury for the entire industry in regard to price suppression and reduction in employment. They also submitted that Globe Spring had not addressed other non-dumping factors, such as the range of products offered by Globe Spring and the costs incurred as a result of the location of Globe Spring in relation to its prospective customers, particularly in the B.C. market. As discussed later, most of the parties opposed also argued that there is more than one class of goods in this inquiry.

15. Finally, parties opposed submitted that the Tribunal is not precluded from terminating a preliminary injury inquiry and that the evidence in this case supports it doing so.

ANALYSIS

Legislative Framework

16. The Tribunal's jurisdiction in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires 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 its determination, the Tribunal took into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*.⁴

17. Subsection 2(1) of *SIMA* defines "injury" as "... material injury to a domestic industry". It also defines "domestic industry" as "... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods 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 and threat of injury.

Like Goods and Classes of Goods

18. Subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as follows:

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

19. In deciding the issue of like goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the domestic goods fulfill the same customer needs as the subject goods.⁵

20. The Tribunal notes that the parties opposed to the complaint have not argued that the subject goods and the mattress innerspring units produced in Canada have different physical and market characteristics and end uses, or fulfill different customer needs. On the basis of the evidence on the record, the Tribunal is of the view that the subject goods compete directly with mattress innerspring units produced in Canada in the Canadian market. Therefore, the Tribunal finds that the mattress innerspring units produced in Canada are "like goods" in relation to the subject goods because they closely resemble the subject goods in terms of physical characteristics, market characteristics and end uses.

21. Concerning the question of classes of goods, parties opposed to the complaint submitted that the goods should be divided into four distinct classes instead of considering them as a single class of goods, as determined by the CBSA. These four classes correspond to the different types of mattress coils that comprise the subject goods, namely: (1) bonnell or open coil; (2) offset coil; (3) pocket coil; and (4) continuous coil.

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

5. *Grain Corn* (15 November 2005), PI-2005-001 (CITT) at paras. 34-36.

22. According to Owen, each coil type is physically different with resulting differences in functionality. It also has a different method of manufacture, has different market characteristics and fulfils different customer needs. Owen submitted that the different physical characteristics are apparent on a visual examination of the goods. It noted that mattress innerspring units with bonnell coils tend to feature identical coils that are physically attached to one another; thus, the entire innerspring set reacts to weight and movement anywhere on the mattress. Owen further argued that offset coils are physically different from bonnell coils because they have flat tops and bottoms and a more cylindrical shape. Concerning continuous coils, Owen noted that they are generally used in higher numbers than bonnell and offset coils. With respect to pocket coils, Owen submitted that they feature an innovative design whereby each individual coil is enclosed in its own fabric pocket. Owen argued that the characteristics of pocket coils allow for customization of innerspring units so that springs with different performance characteristics can be placed in different zones in the unit to accommodate differences in weight distribution in different parts of the body.

23. Owen also submitted that there are significant differences in the method of manufacture of the four types of mattress innerspring units. In its view, these differences are most obvious when comparing pocket coils to the other types of mattress coils. Owen argued that the manual or semi-manual production of pocket coils allows for a greater degree of customization when compared to fully automated production.

24. Concerning market characteristics and customer needs, Owen submitted that innerspring differentiation is a key component in the marketing of mattresses. Owen also argued that the four types of coils are not substitutable for each other and serve different market segments and that this is reflected in their relative pricing, as seen in Globe Spring's price lists. In its view, bonnell and offset coil mattress innerspring units serve the lower end of the market, continuous coil mattress innerspring units are mid-market products, and pocket coil mattress innerspring units serve the high-end or premium market.

25. Globe Spring submitted that the Tribunal should not separate the subject goods and like goods into four different classes. It argued that all the subject goods are comprised of steel coils which are designed to be bound together by border rods and supported by edge guards. In its view, all coil types, whether pocketed or non-pocketed, have the same function, to be the core of a mattress. Globe Spring further submitted that consumers will not always know the nature of the innerspring units in their mattresses and that, even if they did, the consumer's ultimate concern is comfort and a level of support to their liking. Concerning pocket coil mattress innerspring units, Globe Spring submitted that they may be perceived as more expensive, but that there is little more than the fabric pocket over each coil to distinguish it from the other mattress innerspring units in terms of construction. In any event, according to Globe Spring, the Tribunal's jurisprudence recognizes that there may be a range of different product characteristics within the scope of a single class of goods.

26. Globe Spring also disagreed that there are significant differences in the method of manufacture of the four different types of mattress innerspring units and submitted that the information on the record, including the complaint, does not support the contention that there is little customization ability on the part of Globe Spring. Concerning market characteristics and customer needs, Globe Spring submitted that mattress innerspring units from all sources are purchased only by mattress manufacturers. According to Globe Spring, consumers purchase mattresses on the basis of a variety of conditions that appeal to their needs, and the evidence on the record indicates that the basic bonnell coils are the most commonly used in the market. On that basis, Globe Spring argued that the attributes of pocket coil mattress innerspring units may not be as significant as Owen suggested.

27. Simmons also argued that there is a single class of goods in this inquiry. It submitted that, although there are some differences between the various types of mattress innerspring units, these are merely variations that differentiate the end product in the marketplace. Simmons further submitted that the mattress innerspring units fall in a continuum of models and are all like goods in relation to one another. Simmons emphasized that all mattress innerspring units are comprised of the same basic components (metal springs), are manufactured using similar methods of construction and have essentially the same end use, namely, to create the foundation of a finished mattress.

28. In order to decide whether there is more than one class of goods, the Tribunal must determine whether the alleged separate classes of goods constitute like goods in relation to one another. If they do, they will be regarded as comprising one class of goods.⁶ When considering this issue, the Tribunal typically looks at the same factors that it considers in order to determine like goods under subsection 2(1) of *SIMA*, including those listed above.

29. After having considered the parties' submissions and on the basis of the evidence on the record, the Tribunal is not convinced that there is more than one class of goods. In the Tribunal's opinion, all types of mattress innerspring units share the same basic physical and functional characteristics and end use. Irrespective of the type of coils, all mattress innerspring units are made from the same primary input material (carbon steel wire) and, once assembled to the appropriate size, all four types of mattress innerspring units closely resemble each other as single rectangular units. Moreover, all mattress innerspring units have an identical end use, that is, to provide support inside finished mattresses. In that sense, they are substitutable products. The Tribunal further notes that parties opposed have not submitted any evidence that would indicate that the various types of mattress innerspring units do not compete with one another in the marketplace.

30. While the Tribunal recognizes that there are certain differences, particularly in terms of shape, number of coils, kind of support provided and selling price, depending on the type of mattress innerspring units, it is of the view that these differences are not sufficient to justify separating the goods into different classes. These are merely variations of the same basic product that serve to differentiate it in the marketplace. Despite these variations, the Tribunal considers that the various types of mattress innerspring units are like goods in relation to one another. As the Tribunal found in previous cases, where the basic features and components of goods are similar, certain distinguishing characteristics do not warrant separating the goods into different classes,⁷ and different kinds of goods within the definition of the subject goods do not necessarily result in a determination that there is more than one class of goods.⁸

31. Accordingly, the Tribunal finds that mattress innerspring units constitute a single class of goods.

Domestic Industry

32. Globe Spring has identified itself as the sole Canadian producer of mattress innerspring units that sells into the merchant market. It also identified Simmons and Marshall as domestic producers of mattress innerspring units for their respective captive markets. Concerning other potential producers, Globe Spring submitted that Park Avenue Furniture and Regal Springs Ltd. have ceased production.

6. *Leather Footwear* (27 December 2001), NQ-2001-003 (CITT) at 9.

7. *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at paras. 65-68.

8. *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT).

33. On the basis of the evidence on the record of this preliminary injury inquiry, the Tribunal finds that Globe Spring, Simmons and Marshall constitute the domestic industry and that, consequently, in terms of volume of production, Globe Spring and the domestic producers in support of the complaint account for a major proportion of the production of “like goods” in Canada.⁹

Volume of Dumped Goods

34. The Tribunal has followed its usual practice of looking at the latest full three years when examining the impact of dumped imports and has consequently not taken into account the evidence submitted by Globe Spring concerning market conditions prior to 2006. Accordingly, for the purposes of this preliminary injury inquiry, the Tribunal’s period of inquiry extended from January 2006 to December 2008. Due to limitations concerning the data available to Globe Spring for its estimate of imports of mattress innerspring units, the Tribunal relied on the estimates provided by the CBSA in looking at the volume of dumped goods. The Tribunal notes that, in order to construct its estimate of imports, the CBSA made significant adjustments to its source data. Therefore, although these preliminary estimates constitute the best information available at this stage, it is only in the context of a full inquiry under section 42 of *SIMA* that the Tribunal will have an accurate and full picture of the volume of imports that entered Canada.

35. Based on the CBSA’s estimates, imports of the subject goods increased slightly from 2006 to 2007 and fell slightly to a level of 769,360 units in 2008.¹⁰ Overall, between 2006 and 2008, imports of the subject goods remained relatively stable. As well, the subject goods constituted a significant share of total imports, representing between 59 and 65 percent from 2006 to 2008.¹¹ The Tribunal notes that, in comparison with the volume of production by domestic producers, as well as total consumption in the Canadian market, the volume of imports of the subject goods rose slightly over the period from 2006 to 2007 and also fell slightly between 2007 and 2008. Between 2006 and 2008, imports of the subject goods, in comparison with the volume of production by domestic producers and total consumption, remained relatively stable.¹²

36. The Tribunal finds that imports from China represented a very large volume between 2006 and 2008, accounting for the majority of imports in the Canadian market, although the volume remained relatively stable over the period.

Effect on the Price of Like Goods

37. The Tribunal notes that it could not make a direct comparison between the unit selling prices of the subject goods and the unit selling prices of the like goods as estimated by the CBSA, since only FOB prices were available for import data. However, the evidence on the record indicates that the average unit selling prices of the subject goods were lower than the average unit selling prices of non-subject goods by a significant margin throughout the period from 2006 to 2008.¹³ These preliminary data tend to indicate that imports of the subject goods were exerting downward pressure on prices in the market.

9. Administrative Record, Vol. 2A at 11.

10. Administrative Record, Vol. 1A at 121.

11. *Ibid.* at 119.

12. Administrative Record, Vol. 2A at 17, 19.

13. *Ibid.* at 19.

38. Globe Spring submitted evidence to show lost sales to certain customers from 2006 to 2008 as a result of the pricing of the subject goods well below its unit selling prices of mattress innerspring units.¹⁴ These injury allegations are corroborated, to some extent, by the evidence that indicates that the average unit selling price of Globe Spring's mattress innerspring units declined significantly in 2007 compared to 2006. However, in 2008, the average unit selling price of Globe Spring's mattress innerspring units returned to the level that it experienced in 2006.¹⁵ The Tribunal notes that the average prices used in its analysis may be affected by product mix. There may be considerable price variation depending on the size of the mattress innerspring unit, the type of coil and the number of coils in the unit. Nevertheless, the evidence available at this stage tends to indicate that imports of the subject goods significantly undercut the prices of the like goods.

39. The evidence before the Tribunal also demonstrates that Globe Spring's unit selling prices of mattress innerspring units increased at a much slower rate than its unit cost of goods sold for each year between 2006 and 2008. In fact, between 2006 and 2007, Globe Spring's unit selling prices of mattress innerspring units fell, while its unit cost of goods sold increased.¹⁶ As well, Globe Spring provided evidence that the price of carbon steel wire, the primary input material used in manufacturing mattress innerspring units, increased significantly in 2008. Globe Spring provided evidence that indicated that the increase in its pricing of certain models of mattress innerspring units in 2008 was minimal in comparison to the increase in the cost of carbon steel wire.¹⁷ These preliminary data support the Tribunal's view that, due to competition from the subject goods, Globe Spring faced price suppression and was therefore not able to increase its prices sufficiently to recover the increases in the cost of the primary input material.

40. Based on the foregoing, the Tribunal is of the view, at this preliminary stage, that the evidence discloses a reasonable indication that the subject goods caused price undercutting and price suppression.

Impact on the Domestic Industry

41. Concerning the impact of imports of the subject goods on the state of the domestic industry, the Tribunal notes that, during the period from 2006 to 2008, Globe Spring's sales from domestic production and sales of the subject goods remained relatively stable, each capturing an equivalent share of the apparent market.¹⁸

42. As previously discussed, Globe Spring also provided evidence in respect of lost sales due to the presence of dumped imports in the form of price quotes from suppliers of mattress innerspring units produced in China and information on lost sales to six major customers in Canada.

43. The presence of the low-priced dumped imports that prevented the domestic industry from raising its prices and to recover increases in the cost of the primary input material led to a significant deterioration of Globe Spring's net income between 2006 and 2008. This deterioration was due to a significant decline in gross margins and net income from domestic sales.¹⁹ The Tribunal also observes that Globe Spring's employment levels decreased every year between 2006 and 2008.²⁰ As well, it had significant unused capacity throughout the period of inquiry, although capacity utilization did not decrease significantly over the period.²¹

14. The pricing of the subject goods included only FOB prices and a freight charge for certain prices. Administrative Record, Vol. 2 at 23-25.

15. Administrative Record, Vol. 2A at 19.

16. Administrative Record, Vol. 2 at 85, 278.

17. *Ibid.* at 235-37.

18. Administrative Record, Vol. 2A at 19.

19. Administrative Record, Vol. 2 at 278.

20. *Ibid.* at 280.

21. *Ibid.* at 282.

44. The Tribunal is required to examine other injury factors, such as productivity, return on investments, cash flow, inventories, wages, growth and the ability to raise capital. Although no significant evidence was provided concerning these factors, the Tribunal is of the view that the decrease in profitability over the period of inquiry would reasonably be expected to have a negative impact on cash flow and the ability to raise capital.

45. Based on the foregoing, the Tribunal is satisfied that the evidence on the record provides a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

Other Factors

46. Parties opposed to the complaint argued that various non-dumping factors were the cause of injury to the domestic industry. These other factors included, among other things, the range of products offered by Globe Spring and the costs incurred as a result of the location of Globe Spring in relation to its perspective customers, particularly in the B.C. market. In addition to these factors, the recent economic performance of the Canadian and global markets as a result of the current recession may have been a contributing factor to the injury suffered by the domestic industry. The Tribunal also considered imports from non-subject countries, but notes that the evidence shows that they were sold at much higher average prices than the subject goods.²²

47. Having considered the above factors, the Tribunal is of the opinion that, in this preliminary injury inquiry, the evidence on the record regarding any impact of these other factors does not negate its conclusion that there is a reasonable indication of injury caused by the dumping of the subject goods. It is only in the context of an inquiry under section 42 of *SIMA* that the Tribunal will be in a position to fully assess the magnitude of these other factors and their relative importance.

CONCLUSION

48. Based on the above analysis, the Tribunal is of the view that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Ellen Fry
Ellen Fry
Member

André F. Scott
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Member

22. Administrative Record, Vol. 2A at 19.