



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2006-002

Copper Rod

*Determination issued
Monday, October 30, 2006*

*Reasons issued
Tuesday, November 14, 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 COPPER ROD ORIGINATING IN OR EXPORTED FROM
BRAZIL AND THE RUSSIAN FEDERATION AND THE SUBSIDIZING OF
COPPER ROD ORIGINATING IN OR EXPORTED FROM BRAZIL**

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 copper rod with a diameter of at least 6 mm but not exceeding 11 mm, made to American Society for Testing and Materials (ASTM) designation B 49 or equivalent, originating in or exported from Brazil and the Russian Federation and the subsidizing of copper rod with a diameter of at least 6 mm but not exceeding 11 mm, made to ASTM designation B 49 or equivalent, originating in or exported from Brazil have caused injury or retardation or are threatening to cause injury.

This preliminary injury inquiry is pursuant to the notification, on August 30, 2006, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping and subsidizing 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 and subsidizing of the above-mentioned goods have caused injury.

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Elaine Feldman
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Hélène Nadeau
Hélène Nadeau
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The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On August 30, 2006, the President of the Canada Border Services Agency (CBSA) initiated an investigation into the alleged injurious dumping of copper rod with a diameter of at least 6 mm but not exceeding 11 mm, made to American Society for Testing and Materials (ASTM) designation B 49 or equivalent, originating in or exported from Brazil and the Russian Federation (Russia) and the alleged injurious subsidizing of copper rod with a diameter of at least 6 mm but not exceeding 11 mm, made to ASTM designation B 49 or equivalent, originating in or exported from Brazil (the subject goods), following a complaint filed on July 10, 2006, by Nexans Canada Inc. (Nexans).

2. On August 31, 2006,¹ the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.

3. On October 30, 2006, 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 and subsidizing of the subject goods had caused injury.

CBSA'S DECISION

4. The CBSA estimated margins of dumping for the period from January 1, 2005, to June 30, 2006. When expressed as a percentage of the export price, these margins were 6.0 percent for Brazil and 3.2 percent for Russia.³ The CBSA's analysis indicated that the estimated volume of dumped goods from each of the subject countries was not negligible and that the estimated overall weighted average margin of dumping for each subject country was not insignificant.⁴

5. The CBSA accepted Nexans' estimate of the level of Brazil's subsidies to the exporter, which amounted to at least 14 percent of the export price of the subject goods in 2003, 8 percent in 2004 and 5 percent in 2005, excluding certain programs which Nexans could not evaluate.⁵ The CBSA further considered that all alleged programs continue to be available in 2006 and, therefore, estimated the subsidy, for the period from January 1, 2005, to June 30, 2006, at a minimum of 5 percent.⁶ The CBSA's analysis indicated that the estimated volume of subsidized goods from Brazil was not negligible and that the estimated amounts of subsidies for Brazil were not insignificant.⁷

6. In summary, the CBSA was of the opinion that there was evidence that the subject goods had been dumped and subsidized. Furthermore, it stated that there was evidence that disclosed a reasonable indication that the dumping and subsidizing had caused and were threatening to cause injury to the domestic industry.

1. C. Gaz. 2006.I.2587.

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

3. Administrative Record, Vol. 1B at 264.

4. Administrative Record, Vol. 1B at 265.

5. Administrative Record, Vol. 1B at 269.

6. Administrative Record, Vol. 1B at 269.

7. Administrative Record, Vol. 1B at 270. Since the CBSA considered Brazil a developing country, the thresholds for negligibility and insignificance for Brazil were 4 percent and 2 percent respectively.

SUBMISSIONS⁸

Domestic Industry

7. In its complaint, Nexans claimed that the dumped and subsidized goods had caused and threatened to cause injury to the domestic industry. It alleged that the injury manifested itself in the form of significant loss of market share, lost sales to its most significant customer, deflating price trends and reduced profits. In support of its allegations, Nexans provided evidence of a lost account, decreased revenues from domestic sales, declining market share and decreased profitability on its Canadian sales of copper rod.

Parties Opposed to the Complaint

8. The Tribunal received submissions from three parties opposed to the complaint: Prysmian Power Cables and Systems Canada, Ltd. and Prysmian Power Cables and Systems USA, LLC (Prysmian),⁹ Mitsubishi International Corporation (Mitsubishi) and the Embassy of Brazil (on behalf of the Government of Brazil).

9. Generally, parties opposed to the complaint submitted that Nexans' complaint was fatally flawed on two grounds: (1) failure to address materiality of injury against the domestic industry's production of like goods as a whole; and (2) failure to establish the causal relationship between the alleged dumping and subsidizing and the alleged injury.

10. Submissions also related to: (1) Nexans' production, exports, internal transfers, capacity and utilization rate; (2) the alleged Brazilian subsidy and loan programs; and (3) the Canadian-U.S. exchange rate.

ANALYSIS

Legislative Framework

11. The Tribunal's mandate at the preliminary stage of an 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 and subsidizing of the subject goods have caused injury or retardation or are 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*.¹⁰

12. 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 those 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.

8. This portion of the text is intended to outline a number of key submissions made by the parties and is not intended to be exhaustive.

9. In late 2004, Pirelli Cables & Systems became Prysmian. Reference in the remainder of this document will be made only to Prysmian.

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

Like Goods

13. The Tribunal notes that, in initiating its investigation, the CBSA defined the subject goods as copper rod with a diameter of at least 6 mm but not exceeding 11 mm, made to ASTM designation B 49 or equivalent.

14. In deciding the issue of like goods, the Tribunal considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing and distribution) and whether the domestic goods fulfill the same customer needs as the imported goods.

15. Nexans submitted that the subject goods and the goods produced by the domestic industry are essentially identical, as they are similar in appearance and function, are of equal quality¹¹ and compete directly with each other in the Canadian market. The Tribunal notes that these submissions were not refuted by the parties opposed.

16. In view of the evidence on the record, the Tribunal finds that the copper rod produced in Canada that is of the same description as the subject goods is like goods because it closely resembles the subject goods in terms of physical characteristics, market characteristics and end uses.

Domestic Industry

17. There are only two producers of copper rod in Canada, Nexans and Southwire Canada Company (Southwire). According to the information on the record, Southwire produces copper rod only for further internal processing. Southwire does not sell copper rod on either the domestic or the export market. Nexans produces copper rod for the Canadian merchant market, for further internal processing¹² and for the export market. The total annual production of copper rod by both producers was approximately 275,000 tonnes in 2004 and 2005.¹³

18. The Tribunal notes that, in its decision to initiate the investigation, neither the CBSA nor Nexans contacted Southwire. Furthermore, Southwire has not taken any position in respect of this complaint.

19. Based on the evidence on the record, the Tribunal finds that the production of like goods by Nexans represents sufficient production of like goods to constitute a major proportion of the total domestic production of like goods.¹⁴

Cumulation

20. In making a final injury inquiry under section 42 of *SIMA*, the Tribunal must make an assessment of the cumulative effect of the dumping or subsidizing of goods that are imported into Canada if the Tribunal is satisfied that certain conditions are met. As stated in *Corrosion-resistant Steel Sheet*,¹⁵ while subsection 42(3) of *SIMA* deals with final injury inquiries and does not explicitly cover preliminary injury inquiries, the Tribunal considers that it would be inconsistent not to cumulate the imports of the subject goods at this stage when the evidence to date appears to justify cumulation.

11. Administrative Record, Vol. 1 at 16-18.

12. Nexans uses the term "Canada inter-company".

13. Administrative Record, Vol. 1 at 21; Administrative Record, Vol. 2 (protected) at 18.

14. Administrative Record, Vol. 1 at 21.

15. (2 February 2001), PI-2000-005 (CITT) at 4, 5.

21. With respect to the conditions of competition in considering the issue of cumulation, the Tribunal is satisfied that, on the basis of the evidence on the record of this preliminary injury inquiry, the subject goods compete with each other and with the like goods. Therefore, the Tribunal has conducted its injury analysis on the basis of a cumulative assessment of the impact of imports of the subject goods.

Volume of Dumped and Subsidized Goods

22. Nexans claimed that, since 2004, the significant penetration of dumped and subsidized imports from Brazil and Russia has increasingly been displacing its Canadian sales. Prior to 2004, the only imports into Canada of copper rod were from the United States, and import volumes were minimal.¹⁶

23. The Tribunal notes that the data available at this stage of the proceedings show that, from 2003 to 2005, imports from the subject countries have increased in volume and in percentage share of total Canadian imports. In regard to the first six months of 2006, the Tribunal does not have sufficient information at this stage to determine whether imports from the subject countries are declining when considered on an annual basis.¹⁷

24. From 2003 to 2005, the Tribunal notes that, relative to the production of like goods by the domestic producers, the increase in volume of dumped and subsidized goods is significant.¹⁸ The Tribunal further notes that, during the same time period, the merchant market in Canada, expressed in relation to the total Canadian production, is not insignificant.¹⁹

Effect on the Price of Like Goods

25. Nexans alleged that, as a direct result of offers of the subject goods in the Canadian market, its prices for copper rod have been deflated, as it has been forced to reduce its prices. In support of its allegations, Nexans provided examples of price erosion for sales to its largest Canadian customer, Prysmian.

26. Nexans submitted that, as a result of the penetration of the Canadian market by Brazilian copper rod in 2004, it suffered price reduction for its copper rod. Nexans submitted that, even when it lowered its price, Prysmian reduced its tonnage of purchases in 2004. In 2005, with the addition of Russian copper rod to the Brazilian copper rod in the Canadian marketplace, Prysmian stopped purchasing from Nexans. In 2006, Nexans managed to secure some business with Prysmian, albeit at a reduced unit selling price compared to its prevailing price offers in the Canadian market.²⁰ The Tribunal notes that this allegation was not rebutted by the parties opposed.

27. Copper rod pricing includes a number of market-dictated components. The typical elements in the pricing structure of copper rod include: (1) the price of refined copper; (2) the cathode premium; and (3) the rod premium. Nexans' price offers for copper rod typically refer to an amount of "rod adder" plus the price of refined copper; "rod adder" includes both the cathode premium and the rod premium.²¹

16. Administrative Record, Vol. 1B at 261.

17. Administrative Record, Vol. 1B at 261; Administrative Record, Vol. 2 (protected) at 133, 385-95.

18. Administrative Record, Vol. 1 at 21; Administrative Record, Vol. 2 (protected) at 133, 385-95.

19. Administrative Record, Vol. 1 at 21; Administrative Record, Vol. 2 (protected) at 18.

20. Administrative Record, Vol. 1 at 40, 41; Administrative Record, Vol. 2 (protected) at 37, 38, 105.

21. Administrative Record, Vol. 1 at 18, 19.

28. The price of refined copper is published by the London Metal Exchange (LME) and the New York Commodity Exchange (COMEX).
29. The cathode premium, also published by the LME and COMEX, includes the cost of transforming refined copper into cathode form, freight to the customer and profit to the cathode manufacturer.
30. The rod premium includes the cost of transforming copper cathode into rod form, freight to the customer and profit to the rod producer.
31. Nexans submitted that copper rod is a low value-added product.²² Furthermore, it indicated that over 95 percent of the cost of copper rod is made up of the price of refined copper, a commodity traded on the world markets, plus the cathode premium.²³ Given that the price of refined copper and the cathode premium are set internationally, pricing generally varies only for the rod premium, although integrated producers may be able to have a lower cathode premium.
32. Nexans' competition occurs at the level of the rod premium only, and its profit is derived solely from this component. Given that this element is relatively small in proportion to the total price of the copper rod (i.e. because of the price of refined copper and the cathode premium), a large difference in the rod premium results in only a small difference in the total price of the copper rod. Therefore, the Tribunal is of the view that even a relatively small margin of dumping and subsidizing may have a big impact, given that the other components of the price of copper rod are published values.
33. Given the information on the record, it appears that Nexans suffered declines in unit selling value due to imports from the subject countries.

Impact on the Domestic Industry

34. With respect to the impact of the dumped and subsidized goods on the state of the domestic industry, Nexans alleged that it lost significant market share in the Canadian merchant market. In particular, Nexans argued that it lost domestic sales volume in an amount which correlates closely with the volume of imports of the subject goods. Furthermore, Nexans alleged that the pricing pressure from dumped and subsidized imports had a direct impact on its financial results, as it suffered a significant loss of profitability at its rod mill facility.²⁴
35. The evidence on the record shows that Nexans' domestic sales volume destined for the merchant market and its corresponding market share decreased from 2003 to 2005.²⁵ In contrast, sales of the subject goods in terms of volume and market share increased during the same time period.²⁶ The Tribunal notes that these figures would appear to indicate that the subject goods replaced sales lost by Nexans.

22. Administrative Record, Vol. 1 at 19.

23. Administrative Record, Vol. 1 at 28.

24. Administrative Record, Vol. 2 (protected) at 39, 112, 113.

25. Administrative Record, Vol. 1 at 39; Administrative Record, Vol. 2 (protected) at 36, 39, 136.

26. Administrative Record, Vol. 2 (protected) at 133, 136.

36. Mitsubishi alleged that Nexans suffered no injury because Nexans' production increased by 17 percent between 2003 and 2005 and that it was running at or near full capacity.²⁷ Furthermore, Prysmian contended that there is no injury because Nexans compensated for its losses in the domestic merchant market by exporting copper rod in increased quantities. Nexans stated that it increased its production for the export market as a result of losing sales on the domestic market.

37. Both Prysmian and Mitsubishi alleged that any injury to Nexans' merchant market sales would be immaterial relative to the overall production of like goods, including further internal processing and export sales of copper rod. Nexans stated that what counts is injury to the domestic production for domestic consumption and that injury to a domestic industry is not negated by its export sales. Nexans submitted that, in 2003, it supplied 95 percent of the Canadian merchant market, whereas by 2005, it supplied only 43 percent²⁸ of that market because of the significant rise in imports of the subject goods.

38. The Tribunal is of the view that the evidence on the record provides a reasonable indication that the price erosion experienced by the domestic industry was caused by the significant and increasing presence of low-priced subject goods in the Canadian market. These price effects resulted in lost sales revenues for the domestic industry. Overall, there was a reported degradation of the domestic industry's financial performance.

39. The Tribunal acknowledges that Nexans' internal transfers and export sales made positive contributions to the company's bottom line. However, in *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip*,²⁹ the Tribunal did not consider that, when assessing injury to the domestic industry, good performance in one part of the domestic production should be used as a reason for failing to take into account injury caused to another part. It did not support the notion that the determination of injury is an algebraic sum where the pluses and minuses of profits and losses in different parts should be used to cancel each other out. The Tribunal noted that it is entirely possible for an industry to do well in one part and still be injured in another to the detriment of the industry as a whole.

40. Consequently, the Tribunal is of the view that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods caused material injury to Nexans.

Other Factors

41. Parties opposed to the complaint argued that various non-dumping and non-subsidizing factors were the cause of injury to the domestic industry. These included the effects of the depreciation of the U.S. dollar vis-à-vis the Canadian dollar; the impact of the appreciation of the Canadian dollar in light of the very low dumping and subsidizing rates; Nexans' focus on the U.S. market; rising imports from the United States; and the fact that Nexans is a direct competitor of its own customers.

42. The Tribunal considered the above factors, but, at this stage, given the limited evidence on the record, it is difficult to assess the impact that they had on the domestic industry. Consequently, the Tribunal determines that these issues will best be resolved when this matter proceeds to an inquiry under section 42 of *SIMA*.

27. Administrative Record, Vol. 3, Mitsubishi's submission, para 11.

28. The CBSA adjusted Nexans' figures based on import data from customs documentation and found that Nexans actually supplied half of the Canadian merchant market in 2005. Administrative Record, Vol. 1 at 39; Administrative Record, Volume 1B at 261.

29. (17 August 2001), NQ-2001-001 (CITT) at 13.

CONCLUSION

43. On the basis of the information on the record, the Tribunal is of the view that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused significant lost sales, price erosion and resulting deteriorating financial performance for the domestic industry.

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