



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2009-003

Oil Country Tubular Goods

*Determination issued
Friday, October 23, 2009*

*Reasons issued
Monday, November 9, 2009*

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

**OIL COUNTRY TUBULAR GOODS 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 and subsidizing of oil country tubular goods originating in or exported from the People's Republic of China, made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 $\frac{3}{8}$ inches to 13 $\frac{3}{8}$ inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute specification 5CT or equivalent standard, in all grades, excluding drill pipe and excluding seamless casing up to 11 $\frac{3}{4}$ inches (298.5 mm) in outside diameter, have caused injury or retardation or are threatening to cause injury.

This preliminary injury inquiry is pursuant to the notification, on August 24, 2009, 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.

André F. Scott

André F. Scott
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Jason W. Downey

Jason W. Downey
Member

Dominique Laporte

Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

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Evraz Inc. NA Canada

Tenaris Canada (including Prudential Steel Inc.,
Tenaris Global Services [Canada] Inc. and
TenarisAlgomaTubes)

Apex Distribution Inc.

Imex Canada Inc.

Cementing Technology & Equipment Ltd.

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STATEMENT OF REASONS

BACKGROUND

1. On August 24, 2009, following a complaint filed on July 14, 2009, by Tenaris Canada (Tenaris), including Prudential Steel Inc., Tenaris Global Services (Canada) Inc. and TenarisAlgomaTubes, of Calgary, Alberta, Evraz Inc. NA Canada (Evraz) of Regina, Saskatchewan, and Lakeside Steel Corporation (Lakeside) of Welland, Ontario (the complainants), the President of the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping and subsidizing of oil country tubular goods originating in or exported from the People's Republic of China (China), made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 $\frac{3}{8}$ inches to 13 $\frac{3}{8}$ inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute specification 5CT or equivalent standard, in all grades, excluding drill pipe and excluding seamless casing up to 11 $\frac{3}{4}$ inches (298.5 mm) in outside diameter (the subject goods).¹
2. On August 25, 2009, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.
3. The complaint is opposed by Apex Distribution Inc. (Apex), a distributor of OCTG, and Top-Co LP (Top-Co), an end user of OCTG.
4. On October 23, 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 and subsidizing of the subject goods had caused injury.

CBSA'S DECISION TO INITIATE INVESTIGATIONS

5. In accordance with subsection 31(1) of *SIMA*, the CBSA was of the opinion that there was evidence that the subject goods had been dumped and subsidized, as well as evidence that disclosed a reasonable indication that the dumping and subsidizing had caused injury or was threatening to cause injury. Accordingly, the CBSA initiated investigations on August 24, 2009.
6. The CBSA collected information with respect to the volume of dumped goods for the period from July 1, 2008, to June 30, 2009. The CBSA was of the view that the subject goods had been dumped, with an estimated overall weighted average margin of dumping of 11.6 percent, expressed as a percentage of the export price.³
7. With respect to the volume of subsidized goods, the CBSA collected information for the period from January 1 to June 30, 2009. The CBSA was of the view that the subject goods had been subsidized with an estimated overall weighted average amount of subsidy equal to 31.9 percent of the export price of the subject goods.⁴

1. Oil country tubular goods, from any source, that meet this product description will be hereinafter referred to as "OCTG".
2. R.S.C. 1985, c. S-15 [*SIMA*].
3. Administrative Record, Vol. 1F at 54.
4. *Ibid.* at 59.

8. Further, the CBSA was of the opinion that the estimated overall weighted average margin of dumping and amount of subsidy were not insignificant and that the estimated volumes of dumped goods and subsidized goods were not negligible.⁵

SUBMISSIONS OF INJURY

Domestic Producers in Support of the Complaint

9. The complainants submitted that the dumping and subsidizing of the subject goods had caused injury to the domestic industry. In support of their allegations, the complainants provided evidence of increased volumes of the subject goods, price undercutting, price depression, price suppression, lost sales, loss in revenue, reduction in profitability, underutilization of capacity and reduction in employment.

10. They also submitted that the dumping and subsidizing of the subject goods threatened to cause injury to the domestic industry. In this regard, they made reference to the significant rate of increase in the volume of imports of the subject goods, the presence of substantial disposable capacity in China, the existence of trade measures, in other jurisdictions, against OCTG from China and related products, and the increased vulnerability of domestic producers to injury in the face of the current difficult economic environment.

Parties opposed to the Complaint

11. Apex submitted that the complainants had not supported their claim of injury. Among other things, it alleged that domestic producers had not been able to provide distributors with an adequate supply of OCTG and that the complainants' own imports of low-priced OCTG from non-subject countries had negatively affected the market. Apex requested that the Tribunal exclude certain goods for which it claimed that there were no imports.

12. Top-Co requested that the Tribunal not include specialized coupling stock in its assessment of whether there is a reasonable indication of injury.

ANALYSIS

Legislative Framework

13. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine whether there is evidence that 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 takes into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*.⁶

14. 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 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

5. *Ibid.* at 54, 60-61.

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

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 and Classes of Goods

15. The CBSA has defined the subject goods as OCTG having certain characteristics, originating in or exported from China, and the Tribunal must conduct its preliminary injury inquiry on the basis of this product description.

16. However, in assessing whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or retardation or threaten to cause injury to domestic producers of like goods, the Tribunal may consider whether there is one or more classes of goods. Where there is more than one class of goods, the Tribunal assesses the impact of the dumping or subsidizing of the subject goods within each class on the domestic producers of the corresponding like goods.

17. The complainants submitted that casing and tubing are made to the same specifications on the same equipment, have the same distribution channels and are both used “down well”. They also noted the Tribunal’s determinations in *Seamless Carbon or Alloy Steel Oil and Gas Well Casing*⁷ and *Certain Oil and Gas Well Casing Made of Carbon Steel*⁸ that welded and seamless casing constitute the same class of goods and that high-strength casing and low-strength casing are not separate classes of goods.⁹

18. Furthermore, the complainants submitted that green tubes¹⁰ and coupling stock¹¹ ought to be included in the definition of the subject goods. The complainants relied upon a Tariff Board determination that green tubes were properly classified as OCTG and suggested that a finding that did not include them could be circumvented by heat-treating green tubes in Canada or by using them for lower-strength applications. As for the inclusion of coupling stock, they contended that it could be substituted for casing or tubing if the price of coupling stock were low enough to offset the extra weight of steel in its walls.¹²

19. Apex argued that there are five classes of goods: tubing, electric resistance welded (ERW) casing, seamless casing over 298.5 mm (11 ¾ inches), green tubes and coupling stock.¹³ According to Apex, coupling stock cannot be used as casing or tubing due to its significantly reduced internal diameter and larger outside diameter. Green tubes, according to Apex, can only be processed in Canada in two heating facilities approved by the API, which are owned and operated by Tenaris and Evraz, to the exclusion of third-party distributors and brokers.¹⁴

7. (10 March 2008), NQ-2007-001 (CITT) [*Oil and Gas Well Casing*].

8. (4 July 2001), RR-2000-001 (CITT).

9. Administrative Record, Vol. 1 at 22.

10. A green tube is a tube for which the American Petroleum Institute (API) 5CT specification requires additional processing, such as heat treatment and/or testing. Administrative Record, Vol. 1F at 48.

11. Coupling stock is a seamless thick-walled tube intended for use in the manufacture of coupling blanks. Administrative Record, Vol. 1F at 48.

12. Administrative Record, Vol. 1 at 56.

13. Administrative Record, Vol. 3 at 14.

14. *Ibid.* at 18.

20. The complainants replied that there is only one class of goods and contended that Apex had not provided any evidence to support its claim. The complainants also reiterated their view that coupling stock could be substituted for casing or tubing at the right price.¹⁵

21. 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.

22. In deciding the issues of like goods and classes of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels and whether the goods fulfill the same customer needs).¹⁶

23. In relation to these factors, the evidence indicates that OCTG produced in Canada and the subject goods are completely substitutable for one another.¹⁷ Therefore, the Tribunal finds, in the context of this preliminary injury inquiry, that OCTG produced in Canada having the same characteristics as the subject goods constitute like goods to the subject goods.

24. The Tribunal notes that, in *Oil and Gas Well Casing*, it expanded the definition of the like goods to include both seamless and ERW casing, even though the subject goods comprised only seamless casing. Whether there is merit to expand the definition of the like goods in this case to include seamless casing with an outside diameter not exceeding 298.5 mm (11 ¾ inches) is an issue that will need to be fully addressed in the context of an inquiry under section 42 of *SIMA*, if the CBSA makes a preliminary determination that the subject goods have been dumped or subsidized. The Tribunal is of the opinion that additional evidence will be needed to assess all the elements required to reach a decision. Accordingly, should the CBSA conclude that the subject goods have been dumped or subsidized, the Tribunal will collect data relating to seamless casing with an outside diameter not exceeding 298.5 mm (11 ¾ inches) and will also seek submissions from parties on this question.

25. The Tribunal is unable to conclude, at this preliminary stage, that there is more than one class of goods. For the purposes of determining whether there is a reasonable indication of injury, the Tribunal will consider that OCTG constitute a single class of goods.

26. However, the Tribunal finds that the arguments made in support of coupling stock constituting a separate class of goods from other OCTG merit further consideration. The question as to whether there could exist two classes of goods comprising coupling stock and other OCTG will need to be fully addressed during an inquiry under section 42 of *SIMA*, if the CBSA makes a preliminary determination that the subject goods have been dumped or subsidized. Consequently, the Tribunal will collect data on coupling stock separately from data on other OCTG and will also ask for additional submissions from parties on this issue in the context of any inquiry under section 42.

27. The Tribunal has also requested the CBSA to collect separate information on the dumping and subsidizing of these two potential classes of goods.

15. Administrative Record, Vol. 3.

16. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

17. Administrative Record, Vol. 1F at 49.

Domestic Industry

28. In its decision to initiate the investigations, the CBSA indicated that the complainants accounted for approximately 99 percent of the total domestic production of OCTG.¹⁸ The CBSA and the complainants identified Welded Tube of Canada Partnership of Concord, Ontario, as accounting for the remaining 1 percent of domestic production of OCTG.¹⁹

29. Accordingly, the Tribunal finds that the complainants account for a major proportion of the total domestic production of like goods and, thus, are considered to constitute the domestic industry.

Volume of Dumped Goods

30. The complainants submitted that imports of the subject goods had increased significantly since 2006 and now represent the largest share of OCTG imports in Canada.

31. Apex argued that the rapid increase in imports of the subject goods in 2008 and 2009 was due to the increase in drilling activity in both Canada and the United States.

32. The Tribunal notes that the volume of imports of the subject goods, as compiled by the CBSA, increased significantly between 2006 and 2008, with the majority of the increase occurring in the second half of 2008.²⁰ Although the volume of imports of the subject goods fell moderately in the first quarter of 2009 compared to the fourth quarter of 2008, the level was still substantially higher than in the first quarter of 2008. As well, the Tribunal notes that the share of total imports of OCTG held by the subject goods increased from 35 percent in 2006 to 53 percent in 2008, and then to 69 percent in the first quarter of 2009.²¹

33. The Tribunal also considered the volume of imports of the subject goods relative to the volumes of both domestic production of like goods and sales of that production in the Canadian market. Both comparisons show imports of the subject goods increasing appreciably. In particular, the Tribunal notes that the ratio of imports of the subject goods to sales of like goods by domestic producers rose from 5 percent in 2006 to 73 percent by the first quarter of 2009.²²

34. Based on the above, the evidence discloses a reasonable indication that, from 2006 to the first quarter of 2009, the volume of imports of the subject goods increased significantly.

Effect on the Price of Like Goods

35. The complainants contended that the prices of the subject goods had undercut the prices of the like goods, resulting in price suppression and, more recently, in price depression. They made specific allegations of instances where they had to lower prices or were unable to raise prices to recover increasing costs as a result of the presence of the subject goods in the domestic marketplace.

18. *Ibid.* at 50.

19. Administrative Record, Vol. 1 at 22, Vol. 1F at 46.

20. Administrative Record, Vol. 2D at 258.

21. Administrative Record, Vol. 1F at 51.

22. Administrative Record, Vol. 2D at 258, Vol. 2C at 265, Vol. 2A at 3.

36. Apex submitted that domestic producers' prices increased in 2008 and that the first price increases occurred after the Tribunal found a threat of injury in *Oil and Gas Well Casing*. It also alleged that, when the economic downturn occurred in the fourth quarter of 2008 and drilling activity subsided, excess levels of imported and domestic OCTG were sold at prices below cost to clear inventories.

37. The Tribunal examined the income statements²³ provided by the complainants and calculated the average net revenues per tonne. Comparing these values to the unit values for duty estimated by the CBSA,²⁴ the preliminary data disclose a reasonable indication that the prices of the subject goods undercut those of the domestic like goods.

38. Based on the information contained in the specific injury allegations, the Tribunal is also of the view that, at this preliminary stage, there is a reasonable indication that the subject goods have caused price depression.²⁵

39. Turning to price suppression, the Tribunal notes that the quarterly data for 2008 show that the domestic industry may have experienced price suppression in the latter half of 2008 and into 2009, as it was unable to increase prices sufficiently to offset increases in the cost of steel. For the purposes of its determination in this preliminary injury inquiry, the Tribunal is satisfied that there is a reasonable indication that the subject goods have caused price suppression.²⁶

40. Based on the foregoing, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have resulted in price undercutting, price depression and price suppression.

Impact on the Domestic Industry

41. The complainants claimed that the resulting impact of the dumping and subsidizing of the subject goods on the state of the domestic industry is material injury in the form of declining production, sales, market share, capacity utilization, profitability and employment.

42. Apex submitted that the complainants' financial results show substantial increases in sales and net profit from 2007 to 2008 as a result of increased drilling demand in the first half of 2008. It added that, despite the economic downturn in the second half of 2008, the domestic industry still saw record profits in that year, indicating that it had not been negatively affected by the subject goods. Evraz disputed the claim, noting that the financial results to which Apex referred were not specific to OCTG.

43. The Tribunal examined the data on production, employment and capacity utilization provided by the complainants and observed that these performance indicators all deteriorated between 2006 and 2008 and, on a quarterly basis, continued to decline in 2009.²⁷

23. Administrative Record, Vol. 2A at 3.

24. Administrative Record, Vol. 2D at 258-59, 318.

25. See, for example, Vol. 2C at 172, 173, 175, 176, 236, 237, 261.

26. Administrative Record, Vol. 2A at 3.

27. Administrative Record, Vol. 2A at 3, Vol. 2C at 265-66.

44. The Tribunal also observed that the financial performance of the domestic producers worsened between the third quarter of 2008 and the fourth quarter of 2009, as both gross margins and net incomes decreased.²⁸ In addition, the preliminary data show that the domestic producers steadily lost market share between 2006 and 2008 as a result of the significant increase in the volume of imports of the subject goods.²⁹

45. Finally, the Tribunal is satisfied that the specific allegations submitted by the domestic producers provide a reasonable indication that the subject goods caused the domestic industry to lose sales.³⁰

46. Based on the foregoing, the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

Other Factors

47. Apex submitted that a decision by the domestic industry to move away from a consignment-based inventory system for distributors to a direct sell model had resulted in the industry putting distributors on allocation and advising them to look for alternate sources of supply. According to Apex, distributors could not cancel foreign orders in the wake of the economic downturn and were forced to sell off the imported OCTG, including the subject goods, at low prices.

48. Apex further contended that the complainants had imported OCTG from affiliated mills in foreign countries at prices that undercut the price of the subject goods. It was also of the view that the complainants had not invested in their Canadian mills to remain competitive in a global market.

49. Evraz responded that Apex's claim that distributors and domestic producers were responsible for low prices is not tied to any concrete evidence on the record. Tenaris submitted that the complainants' position is corroborated by Apex's submission that distributors were caught with large inventories of imports of the subject goods, which resulted in a pricing battle.

50. The Tribunal is of the view that the factors raised by Apex may have had an impact on the domestic industry. However, the evidence on the record regarding the impact of these other factors is insufficient to negate the Tribunal's conclusion that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury. It is only in the context of an inquiry under section 42 of *SIMA* that the Tribunal will be in a position to fully probe these other factors and their relative importance.

Exclusions

51. With respect to the requests for exclusions by Apex for certain goods for which it claimed that there were no imports and by Top-Co for specialized coupling stock, the Tribunal notes, as stated in the notice of commencement of preliminary injury inquiry, that it does not consider exclusion requests at this stage of the proceedings.

28. Administrative Record, Vol. 2A at 3.

29. Administrative Record, Vol. 2A at 3, Vol. 2D at 258.

30. See, for example, Administrative Record, Vol. 2C at 172, 173, 175, 176, 236, 237, 261.

CONCLUSION

52. Based on the foregoing analysis, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury.

André F. Scott
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