



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## DETERMINATION AND REASONS

Preliminary Injury Inquiry  
No. PI-2006-003

Disposable Adult Incontinence  
Briefs

*Determination issued  
Monday, January 22, 2007*

*Reasons issued  
Tuesday, February 6, 2007*

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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 DISPOSABLE ADULT INCONTINENCE BRIEFS  
ORIGINATING IN OR EXPORTED FROM FRANCE**

**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 all-in-one (one piece) disposable adult incontinence briefs, which provide absorbent protection against urinary and fecal incontinence and are held in place during use by means of a fastening system, originating in or exported from France has caused injury or retardation or is threatening to cause injury.

This preliminary injury inquiry is pursuant to the notification, on November 22, 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.

James A. Ogilvy  
James A. Ogilvy  
Presiding Member

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

Elaine Feldman  
Elaine Feldman  
Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

The statement of reasons will be issued within 15 days.

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Meriel V. M. Bradford, Member  
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|  |  |
|--|--|
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| Tyco Healthcare Group Canada, Inc.       | Darrel H. Pearson<br>Jesse I. Goldman<br>Richard S. Gottlieb |
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## STATEMENT OF REASONS

### BACKGROUND

1. On November 22, 2006, the President of the Canada Border Services Agency (CBSA) initiated an investigation into the alleged injurious dumping of disposable adult incontinence briefs originating in or exported from France (the subject goods), following a complaint filed on October 2, 2006, by SCA North America – Canada, Inc. (SCA).
2. On November 23, 2006, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.
3. On January 22, 2007, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,<sup>1</sup> the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury.

### CBSA'S DECISION

4. The CBSA estimated the margins of dumping for the period from October 1, 2005, to September 30, 2006. Its analysis indicated that the subject goods accounted for approximately 5.5 percent of disposable adult incontinence briefs imported into Canada during its period of investigation and that these were dumped by margins ranging from 34.0 percent to 81.7 percent, with an estimated overall weighted average margin of dumping of 43.5 percent, expressed as a percentage of the export price. The CBSA's analysis indicated that the estimated volume of the dumped goods was not negligible and that the estimated weighted average margin of dumping was not insignificant.
5. In summary, the CBSA was of the opinion that there was evidence that the subject goods had been dumped. In addition, it stated that there was evidence that disclosed a reasonable indication that the dumping had caused injury or was threatening to cause injury to the Canadian industry.

### SUBMISSIONS

#### Domestic Industry

6. In its complaint, SCA alleged that the subject goods had been and were being dumped and that such dumping had caused and was threatening to cause material injury to the domestic industry producing disposable adult incontinence briefs. In support of its allegations, SCA submitted that it had provided evidence of lost market share, price erosion and suppression, increased rebates, lost sales and reduced profitability.

#### Party Opposed to the Complaint

7. The Tribunal received one submission from a party opposed to the complaint, Tyco Healthcare Group Canada, Inc. (Tyco). In summary, Tyco submitted that SCA was the price leader in Canada and, given the very significant presence in the market of imports from the United States, has left little room for the relatively negligible volume of imports from France by Tyco.

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

8. Tyco also submitted that SCA had provided no evidence of lost sales or price suppression or erosion outside the province of Quebec and that the complaint is therefore regional, not national, in scope.<sup>2</sup> Tyco further submitted that, if imports from France were disruptive, imports from the United States must also have been disruptive.<sup>3</sup> It argued that the industry must be injured in the entire market, since cross-competition between sales through the Request for Proposal (RFP) process and those through distributors and retailers that do not employ an RFP process<sup>4</sup> must be taken into account.

9. Finally, Tyco referred to a number of non-dumping factors, such as premiums for incumbency, brand strength, service levels, lead and delivery times, and marketing and promotional efforts, that, it submitted, could explain the alleged injury.

## ANALYSIS

### Legislative Framework

10. 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 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*.<sup>5</sup>

11. 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 or threat of injury.

### Like Goods

12. The Tribunal notes that, in initiating its investigation, the CBSA defined the subject goods as all-in-one (one piece) disposable adult incontinence briefs, which provide absorbent protection against urinary and fecal incontinence and are held in place during use by means of a fastening system, originating in or exported from France.

13. 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.

14. SCA submitted that the subject goods and the goods produced by the domestic industry are directly substitutable and compete directly with each other in the Canadian market. The Tribunal notes that these submissions were not challenged by the party opposed.

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2. Administrative Record, Vol. 3, Tyco's submission, para. 4.

3. Administrative Record, Vol. 3, Tyco's submission, paras. 5-11.

4. Administrative Record, Vol. 3, Tyco's submission, paras. 12-13.

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

15. In view of the evidence on the record, the Tribunal finds that disposable adult incontinence briefs produced in Canada are like goods to the subject goods.

### **Domestic Industry**

16. The evidence on the record at this stage indicates that SCA is the only known producer of like goods in Canada. Therefore, the Tribunal finds that SCA constitutes the domestic industry.<sup>6</sup>

### **Volume of Dumped Goods**

17. SCA submitted that the volume of imports of the subject goods increased dramatically in the Canadian market beginning in 2004 and has continued to increase, in particular in the first half of 2006. These allegations were not contradicted.

18. With respect to estimating the volume of imports of disposable adult incontinence briefs, the Tribunal notes that publicly available statistics are not helpful because they include a wide range of other products. Given the limitations of the statistics, the CBSA estimated the volume of imports of the subject goods based on its analysis of actual import data obtained from its internal information system and from customs entry documentation. Using this approach, the CBSA estimated that, during the period of investigation, October 1, 2005, to September 30, 2006, imports from France accounted for 5.5 percent of the total volume of imports of disposable adult incontinence briefs into Canada.

19. The Tribunal notes that the evidence on the record, based on the CBSA's estimates, shows a significant increase in the volume of imports of the subject goods between 2004 and the end of the first half of 2006.

### **Effect on the Price of Like Goods**

20. As to the effect of the subject goods on the price of like goods, SCA claims that the continuous decrease in the selling prices of the allegedly dumped goods has caused the unit price of like goods in Canada to fall since 2003. The company referred to the average declared values of imports from France, which show prices varying from \$7.59 per kg in 2003 to \$3.16 per kg for the first half of 2006. In addition, SCA provided information showing a continuous decline in its average unit net selling price per kilogram during the period from 2004 to the end of the first half of 2006. SCA claimed that, in order to remain competitive, it was forced to further discount its prices to retain contracts.<sup>7</sup>

21. With respect to price erosion, SCA provided evidence of pricing in bidding situations where it was necessary for it to reduce its offered prices in order to compete. This has not guaranteed positive results for SCA; in certain instances, its bids were still unsuccessful despite the additional discounting and, in others, it obtained the contracts only as a result of its price reductions.

22. Although, in theory, these circumstances might indicate price erosion, the Tribunal notes that, from 2003 to the end of the first half of 2006, the overall price movement of the like goods was relatively small as a proportion of the total unit price and finds that the evidence of price erosion is inconclusive.

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6. Administrative Record, Vol. 1 at 11.

7. Administrative Record, Vol. 1 at 30, 31.

### Impact on the Domestic Industry

23. In its complaint, SCA argued that, while the volume of imports of the subject goods increased between 2004 and the first half of 2006, SCA's market share was declining and the market share held by all other countries was also declining in the same period.<sup>8</sup>

24. On the other hand, Tyco submitted that, rather than losing market share to imports from France, the domestic industry has lost market share because of the growing imports from the United States.<sup>9</sup>

25. The Tribunal notes the discrepancy between the publicly available data provided by SCA, which include non-subject goods, and those estimated by the CBSA for the subject goods only. The Tribunal is of the view that the CBSA's data show that, for the period between 2003 and 2005, SCA's share of the market decreased and then, in the first half of 2006, dropped even more. For the same period, the share of imports from the United States increased and subsequently slightly decreased in the first half of 2006, while the share held by imports from sources other than the United States and France remained stable. However, imports of the subject goods were stable in 2004 and 2005 and then increased significantly in the first half of 2006.

26. In the Tribunal's view, SCA's loss of market share may therefore be attributed in part to the increased presence of the subject goods over the period between 2003 and the first half of 2006.

27. Regarding lost sales, SCA alleged the loss of contracts and sales in competitive bidding situations. SCA provided details on contracts within Quebec, but did not provide any evidence as to lost sales elsewhere, other than a listing of contracts that it considers to be "at risk" in competitive bidding situations that will arise in the future.

28. Nevertheless, the Tribunal is of the view that the circumstances described by SCA provide a reasonable indication that the lost sales experienced by the domestic industry were caused by the presence of dumped goods from France in the Canadian market. Based on this recent experience, it is reasonable to conclude that sales may be lost in the future with the upcoming renewal of certain contracts.

29. The Tribunal therefore views the specific account-based evidence provided by SCA as support for its claim of injury in the form of both lost sales and lost market share.

30. In its brief, SCA refers to price suppression and argues that its reduced profitability and an increase in its cost of goods sold should be ascribed directly to the presence of dumped imports. However, the Tribunal does not consider this claim of reduced profitability due to low-priced subject goods to be adequately supported by the evidence. For example, the Tribunal notes that, over recent years, fluctuations in the average cost of goods sold and gross margin were relatively small. Therefore, the Tribunal is of the view that factors other than dumping may have affected SCA's profitability.

### Other Factors

31. As noted above, the party opposed to the complaint submitted that various non-dumping factors were the cause of the injury to the domestic industry. These other factors included premiums for incumbency, brand strength, service levels, lead and delivery times, and marketing and promotional efforts.

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8. Administrative Record, Vol. 1 at 27.

9. Administrative Record, Vol. 3, Tyco's submission, para. 8.



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

### CONCLUSION

33. On the basis of the information on the record and in light of the above analysis, the Tribunal finds that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry in the form of lost sales and lost market share.

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