



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2004-001

Outdoor Barbeques

*Determination issued
Friday, June 11, 2004*

*Reasons issued
Friday, June 25, 2004*

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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 AND SUBSIDIZING OF OUTDOOR BARBEQUES
ORIGINATING IN OR EXPORTED FROM THE PEOPLES' 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 self-standing barbeques for outdoor use, consisting of metal lid, base and frame, fuelled by either propane or natural gas, with primary cooking space between 200 and 550 square inches (1,290 and 3,549 square centimetres), in assembled or knocked-down condition, originating in or exported from the Peoples' Republic of China, have caused injury or retardation or are threatening to cause injury to the domestic industry.

This preliminary injury inquiry is pursuant to the notification, on April 13, 2004, 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 to the domestic industry.

Patricia M. Close
Patricia M. Close
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Zdenek Kvarda
Zdenek Kvarda
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 June 11, 2004, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,¹ the Canadian International Trade Tribunal (the Tribunal) issued a preliminary determination of injury relating to the dumping and subsidizing of self-standing barbecues for outdoor use, consisting of metal lid, base and frame, fuelled by either propane or natural gas, with primary cooking space between 200 and 550 square inches (1,290 and 3,549 square centimetres), in assembled or knocked-down condition, originating in or exported from the Peoples' Republic of China (China) (the subject goods).

2. The Tribunal's determination completed its preliminary injury inquiry, which was commenced following the initiation, on April 13, 2004, by the President of the Canada Border Services Agency (CBSA) of an investigation into the alleged injurious dumping and subsidizing of the subject goods. The investigation was initiated by the CBSA following a complaint filed by Fiesta Barbeques Limited (Fiesta) on February 19, 2004.

CBSA'S DECISION

3. The CBSA estimated margins of dumping by comparing the normal values provided by Fiesta with export prices from customs entry documentation. The calculations were based on imports into Canada of the subject goods during the period from January 1, 2003, to December 31, 2003. Based on the CBSA's analysis, 98.0 percent of the subject goods were estimated to be dumped. The estimated volume of dumped goods, expressed as a percentage of total imports from all countries for the period, was greater than 77.0 percent. The estimated weighted average margin of dumping, expressed as a percentage of the export price, was 45.2 percent.

4. The CBSA also found that there was reason to believe that there were a number of export-oriented and domestic programs and incentives provided by the Chinese government that might constitute actionable subsidies under the World Trade Organization and that the weighted average margin of dumping found for the subject goods might be partly attributable to these export-contingent subsidies. It also found that there might exist an amount of non-export-oriented domestic subsidy, which it estimated at 9.7 percent of the export price of the subject goods.

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

SUBMISSIONS

Domestic Industry

5. In its complaint, Fiesta submitted that the dumping and subsidizing of the subject goods have caused and threaten to cause injury to the domestic industry. In support of its allegations, it provided evidence to show that, starting in 2002, it experienced declines in net revenues, reduced gross margins and net income, loss of market share, declining sales, lower production volume and capacity utilization, and reduced levels of employment. It also submitted that the above-noted injury factors would continue and would threaten the domestic industry if the dumping and subsidizing were allowed to continue.

Parties Opposed to the Industry's Complaint

6. The Tribunal received submissions from three parties opposed to Fiesta's complaint: Loblaw Companies Limited (Loblaw), Lucas Innovations Inc. and Jinwoni Industry Company (collectively referred to as Lucas), and The Coleman Company, Inc. (Coleman).

7. Loblaw and Lucas² argued that the evidence submitted by Fiesta was flawed and incomplete and did not meet the standard required under *SIMA* for evidence that discloses a reasonable indication of injury. Regarding evidence of injury from subsidizing, they argued that Fiesta had failed to provide sufficient evidence that any exporter or producer in China had received a financial contribution, from any level of government, that would be considered to provide a benefit to a producer or exporter of the subject goods. They further contended that the Chinese outdoor barbeque models which they supplied to the Canadian market provided better value, had more attractive features and were constructed somewhat differently from Fiesta's models,³ were made to order by Lucas exclusively for Loblaw and were sold only through Loblaw stores. According to their submission, the Lucas/Loblaw outdoor barbeques comprised a separate class of goods and should be excluded from further inquiry.

8. Coleman requested a product exclusion for its portable RoadTripTM table-top barbeques, for use away from home, on the basis that there is no equivalent outdoor barbeque marketed by Fiesta.

ANALYSIS

9. The Tribunal's mandate at the preliminary stage of an injury inquiry is set out under 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 or subsidizing of the subject goods has caused injury or retardation or is threatening to cause injury. Issues of whether there is dumping and/or subsidizing fall within the CBSA's jurisdiction.

10. Subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry" and "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. Therefore, the Tribunal must identify the like goods and the domestic industry that produces those goods before addressing the injury issue.

2. The imported outdoor barbeques that Loblaw purchases are supplied by Lucas and are sold in Canada under the brand name "Life@Home".

3. For example, the lids and bases of the Life@Home barbeques are made of stainless steel, while Fiesta's models are made of aluminum.

11. The Tribunal notes that, in initiating its investigation, the CBSA found that there was one class of goods, as described in the product definition. On the basis of the evidence submitted to date, the Tribunal is not convinced that there is more than a single class of goods. In the Tribunal's view, the Lucas/Loblaw outdoor barbeques appear to share the same basic physical and functional characteristics and end uses as all the other outdoor barbeques that fall within the product definition. In the Tribunal's opinion, the fact that they may have some different features, may be constructed somewhat differently and may be distributed on an exclusive basis does not necessarily mean that they form a separate class of goods. The Tribunal is of the view that Fiesta's outdoor barbeque models closely resemble the subject goods and that they are therefore like goods to the subject goods.

12. With respect to the issue of domestic industry, the record shows that, in addition to Fiesta, there are three other Canadian producers of like goods, namely, Onward Manufacturing Co. Ltd. (OMC), CFM Corporation (CFM) and Wolf Steel Ltd. OMC and CFM have indicated that they support Fiesta's complaint. According to the production data on the record, Fiesta, OMC and CFM accounted for well over 90 percent of total domestic production in 2003. Accordingly, at this stage, the Tribunal finds that Fiesta, OMC and CFM represent sufficient production to constitute the domestic industry.

13. Turning to the evidence on the record relating to injury, the Tribunal notes that the preliminary data indicate a significant increase in the volume of imports of the subject goods from January 1, 2000, to December 31, 2003.⁴ Over this period, imports of the subject goods increased their market share, while the domestic industry's sales volumes and market share declined. Fiesta contends that the increase in import penetration in the Canadian outdoor barbeque market resulted in lost business at major accounts in 2002 and 2003. In the complaint, information was provided to illustrate the decline in sales volumes at Fiesta's major accounts during this period. Fiesta also submitted financial statements that showed declining revenues, margins and operating income between fiscal years 2001 and 2003. According to Fiesta, these declining financial results reflect the sales lost to the dumped and subsidized goods.⁵ Fiesta also submitted that the loss of sales to the subject goods resulted in a decline in capacity utilization and reduced employment.

14. In the Tribunal's opinion, the evidence on the record indicates a correlation between the increase in imports of the subject goods at dumped and subsidized prices and the decline in the industry's sales, financial performance, and other factors such as capacity utilization and employment. The Tribunal finds that this correlation gives a reasonable indication that a cause and effect relationship exists between the subject goods and the industry's declining performance.

15. As to the requested exclusions, the Tribunal notes that, while it may grant exclusions at the preliminary injury inquiry stage, such matters are ordinarily best addressed within the context of a full inquiry.⁶

4. Lucas contests some of the import data on the record. The Tribunal notes that these are only preliminary data derived from Fiesta and CBSA sources. It is only through a full inquiry that more definitive data can be established.

5. Lucas argues that these financial losses are due to reasons other than dumping or subsidizing. Again, the Tribunal notes that such arguments can only be resolved through the full inquiry process.

6. In a letter received on June 4, 2004, Coleman advised the Tribunal that the CBSA had advised it that the RoadTrip™ grill was not a subject product and that Coleman was withdrawing its request before the Tribunal for an exclusion regarding this product.

CONCLUSION

16. Having regard to the foregoing, the Tribunal finds that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

Patricia M. Close
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Presiding Member

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Pierre Gosselin
Member

Zdenek Kvarda
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