



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-2007-002

Carbon Steel Welded Pipe

*Determination issued  
Tuesday, March 25, 2008*

*Reasons issued  
Wednesday, April 9, 2008*

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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 CARBON STEEL WELDED PIPE  
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 alleged dumping and subsidizing of carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury.

This preliminary injury inquiry is pursuant to the notification, on January 23, 2008, 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.

James A. Ogilvy  
James A. Ogilvy  
Presiding Member

Ellen Fry  
Ellen Fry  
Member

Diane Vincent  
Diane Vincent  
Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

The statement of reasons will be issued within 15 days.

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## STATEMENT OF REASONS

### BACKGROUND

1. On January 23, 2008, the President of the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping and subsidizing of carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, originating in or exported from the People's Republic of China (China) (the subject goods), following a complaint filed on December 3, 2007 by ArcelorMittal and Mittal Canada Inc. (ArcelorMittal).
2. On January 24, 2008, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.
3. On March 25, 2008, 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 and subsidizing of the subject goods had caused injury.

### CBSA'S DECISION

4. The CBSA collected information with respect to the volume of dumped goods for the period from January 1 to December 31, 2007. At the initiation of its investigation, the CBSA estimated that, for this period, 99 percent of the subject goods were dumped, with margins of dumping ranging from 1 percent to 137 percent, when expressed as a percentage of export price. The CBSA also estimated the overall weighted average margin of dumping at 50 percent, when expressed as a percentage of the export price. Further, the CBSA's analysis indicated that the estimated volume of the dumped goods was not negligible and that the estimated overall weighted average margin of dumping was not insignificant.<sup>2</sup>
5. The CBSA's collected information with respect to the volume of subsidized goods for the period from January 1 to December 31, 2007. The CBSA estimated that, for this period, the amount of subsidy was equal to 15 percent of the export price of the subject goods. The CBSA considers that the alleged subsidies have benefited 96 percent of the subject goods. Accordingly, the CBSA determined that the volume of subsidized goods was not negligible and that the amount of the subsidy was not insignificant.<sup>3</sup>
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 injury or were threatening to cause injury to the domestic industry.

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

2. Administrative Record, Vol. 11 at 13.

3. *Ibid.* at 20-21. Since the CBSA considered China a developing country, the thresholds for negligibility and insignificance for China were 4 percent and 2 percent respectively.

## SUBMISSIONS ON INJURY

### Domestic Industry

7. In its complaint, ArcelorMittal claimed that the dumping and subsidizing of the subject goods had caused and threatened to cause injury to domestic producers of carbon steel welded pipe. ArcelorMittal alleged that it had suffered injury in the form of price erosion, price suppression, lost sales, reduced market share, capacity under-utilization and reduced employment, as well as diminished revenues, gross margins and net profits. As for the threat of injury, ArcelorMittal submitted that imports of the subject goods are increasing rapidly and that Chinese producers are export-oriented. Further, ArcelorMittal argued that trade actions against Chinese steel pipe in other jurisdictions would lead to a diversion of goods into Canada. ArcelorMittal provided evidence in support of its allegations.

8. The complaint is supported by four other producers of carbon steel welded pipe, Lakeside Steel Corporation (Lakeside), IPSCO Inc. (IPSCO), Prudential Steel Ltd. (Prudential) and Bolton Steel Tube Co. Ltd. (Bolton).

### Parties Opposed to the Complaint

9. The Tribunal received submissions from two parties opposed to the complaint: the Canadian Fence Industry Association, Western Chapter (CFIA) and Protin Import Ltd. (Protin).

10. The CFIA submitted that IPSCO, Lakeside and Prudential do not make galvanized pipe for the fencing industry and that, if ArcelorMittal makes galvanized pipe for the fencing industry, it has never sold its product to a fence company in Western Canada. The CFIA stated that Bolton is the only domestic producer to have made a sale of fencing pipe to one of its members. The CFIA argued that injury cannot be claimed in a market where a domestic producer has decided to be absent.

11. Protin submitted that factors other than the dumping and subsidizing, including the recent appreciation in the value of the Canadian dollar and the nature of ArcelorMittal's production process, had had a negative effect on the domestic industry. Further, despite the injury claimed by ArcelorMittal, Protin noted that the financial results for ArcelorMittal's parent company showed highly positive results for 2007.

12. Finally, parties opposed submitted that the imposition of anti-dumping or countervailing duties would harm the construction and fencing industries, as well as Canadian consumers.

## 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 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.<sup>4</sup> 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>

14. 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 and Classes of Goods

15. ArcelorMittal submitted that the subject goods and the goods produced by the domestic producers are commodity products, which are fully substitutable and compete directly with each other in the Canadian market, and that, accordingly, domestically produced carbon steel welded pipe is like goods to the subject goods.

16. The CFIA submitted that any galvanized pipe produced by domestic producers for use in chain link fences is not like goods because it does not compete directly with the subject goods because of differences in physical characteristics, including the nature of the galvanized finish, wall thickness and weight. In response, ArcelorMittal argued that the proper interpretation of like goods includes the broad array of standard pipe products used for the low-pressure conveyance of fluids and gases in plumbing and heating, sprinkler pipe and water well casing, as well as fencing pipe. It further submitted evidence that it does produce and sell fencing pipe in Canada.

17. In deciding the issue 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), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.<sup>6</sup>

18. In view of the evidence on the record, the Tribunal finds, in the context of this preliminary injury inquiry, that the carbon steel welded pipe produced in Canada that is of the same description as the subject goods is like goods.

19. As for the issue of classes of goods, ArcelorMittal submitted that there is a single class of goods. The CFIA submitted that either the subject goods should not include galvanized or fencing pipe or a product exclusion should be granted for galvanized or fencing pipe. Protin proposed that galvanized pipe be divided into two classes of goods, namely, pre-galvanized pipe and hot-dip galvanized pipe.

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4. The Tribunal notes that it is its longstanding practice to make a cumulative assessment of the injurious effects of both dumped and subsidized goods (cross-cumulation) from a given country in the context of an inquiry under section 42 of *SIMA*. The Tribunal therefore considers that it would be inconsistent not to cross-cumulate the subject goods in a preliminary injury inquiry and has consequently cumulatively assessed the impact of the dumping and subsidizing of the subject goods on the domestic industry.

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

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

20. In light of the evidence on the record, the Tribunal finds, in the context of this preliminary injury inquiry, that carbon steel welded pipe constitutes a single class of goods. As stated in the notice of commencement of preliminary injury inquiry, the Tribunal does not consider exclusion requests at this stage of the proceedings.

### **Domestic Industry**

21. The Tribunal notes that, in its decision to initiate the investigations, the CBSA identified four domestic producers of carbon steel welded pipe: ArcelorMittal, Lakeside, IPSCO and Prudential. These producers provided the CBSA with information on the volume of their production of carbon steel welded pipe.

22. In their submissions to the Tribunal, the CFIA and Protin identified three other potential domestic producers of carbon steel welded pipe: Bolton, Delhi-Solac Inc. and Quali-T-Group ULC. The Tribunal was unsuccessful in its efforts to obtain information from these producers regarding the volume of their production of carbon steel welded pipe. However, as noted above, Bolton indicated to the Tribunal that it supported the complaint.

23. Accordingly, on the basis of the evidence on the record of this preliminary injury inquiry, the Tribunal finds that ArcelorMittal, Lakeside, IPSCO and Prudential constitute the domestic industry. Should this case proceed to a final injury inquiry, the Tribunal may revisit its decision as to which domestic producers of carbon steel welded pipe should be included in the domestic industry as it collects additional information.

### **Volume of Dumped and Subsidized Goods**

24. Data from the CBSA on the record of this preliminary injury inquiry indicate that the volume of imports of the subject goods increased by approximately 55 percent between 2004 and 2007. The evidence also shows that the volume of imports of carbon steel welded pipe from non-subject countries fell by approximately the same percentage between 2004 and 2007. The subject goods accounted for nearly half of the total volume of imports of carbon steel welded pipe in 2007, compared to close to 20 percent in 2004.<sup>7</sup>

25. The Tribunal estimates that, while the volume of production of the like goods increased by only 5 percent between 2004 and 2006, the ratio of imports of the subject goods to domestic production increased by nearly 50 percent. During the first nine months of 2007, the volume of imports of the subject goods exceeded the volume of production of the like goods.<sup>8</sup>

26. The Tribunal further estimates that the total domestic market declined by 30 percent between 2004 and 2006. Canadian producers' domestic sales of carbon steel welded pipe declined by 14 percent between 2004 and 2006, while sales of imports of the subject goods increased by four times that much. As a result of these trends, the market share held by domestic producers climbed slightly, from 17 percent in 2004 to 20 percent in 2006, while the market share held by imports of the subject goods more than doubled during the same period, from 17 percent to 37 percent. Imports of carbon steel welded pipe from non-subject countries were also displaced in the domestic market by the subject goods, losing almost 25 percentage points of market share.<sup>9</sup>

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7. Administrative Record, Vol. 2 at 228.

8. *Ibid.* at 109.2-109.3, 109.6, 130, 225-26, 446.

9. *Ibid.* at 109.2-109.3, 109.6, 130, 225-26.



27. As will be discussed below, it is the Tribunal's view that the evidence indicates that the domestic industry maintained its share of the reduced Canadian market by lowering its prices in the face of a significant increase in the presence of the subject goods.

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

28. The Tribunal notes that the unit value for duty of the subject goods was significantly lower than the selling price of domestic carbon steel welded pipe throughout the period that it examined, even when estimated costs of freight and brokerage charges were added to the unit value for duty. Moreover, except in 2004, the unit value for duty of the subject goods was the lowest for all imports.<sup>10</sup>

29. Between 2004 and interim 2007, the selling prices of domestic carbon steel welded pipe declined significantly. In the Tribunal's view, the prices of domestic carbon steel welded pipe were likely forced downward to compete with the prices of the subject goods, as domestic producers tried to maintain volume and market share in a reduced market.

30. The Tribunal notes the great discrepancy between the prices of the subject goods and the prices of goods from the United States and the rest of the world, and the fact that domestic prices were well below those of non-subject imports from 2005 through the third quarter of 2007.<sup>11</sup> This supports the Tribunal's view that domestic producers reacted primarily to the prices of the subject goods. There is insufficient evidence on the record to indicate what role product mix may have had in the relatively high pricing of imports of carbon steel welded pipe from the United States and the rest of the world.

31. Finally, the Tribunal notes that ArcelorMittal submitted evidence to show loss of sales to certain customers as a result of the pricing of the subject goods at 10 to 25 percent below ArcelorMittal prices.<sup>12</sup>

### **Impact on the Domestic Industry**

32. The Tribunal notes that ArcelorMittal's revenues from Canadian sales have fallen every year since 2004 and that this downward trend continued into the first nine months of 2007. Over the same period of time, the gross margin on its Canadian sales suffered a corresponding negative impact.<sup>13</sup> Further, there is evidence that ArcelorMittal had to reduce capital investments.<sup>14</sup>

33. As for other indicators of injury, the Tribunal notes ArcelorMittal's submission that it had to reduce shifts and close its facilities for certain periods of time between 2004 and the third quarter of 2007. Further, there is evidence that ArcelorMittal's capacity utilization remained low throughout the period of investigation. Finally, the Tribunal notes that ArcelorMittal asserted that its inventory levels increased.<sup>15</sup>

34. On the basis of the submissions by ArcelorMittal and the other domestic producers, the Tribunal is of the view that the evidence on the record provides a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

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10. *Ibid.* at 109.2-109.3, 109.6, 109.10, 130, 225-26, 228.

11. *Ibid.* at 130, 109.2-109.3, 109.6, 130, 225-26, 228.

12. *Ibid.* at 94, 109.12-109.13, 128.

13. *Ibid.* at 130.

14. *Ibid.* at 97.

15. *Ibid.* at 95-96.

**Other Factors**

35. Parties opposed to the complaint argued that various non-dumping and non-subsidizing factors were the cause of injury to domestic producers. These factors included, among others, the strengthening of the Canadian dollar relative to the U.S. dollar and the allegedly high cost of ArcelorMittal's production facilities.

36. The Tribunal has considered the above factors and 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 and subsidizing 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.

**CONCLUSION**

37. Having regard to the above analysis, 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 injury to the domestic industry.

James A. Ogilvy  
James A. Ogilvy  
Presiding Member

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