



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2004-003

Laminate Flooring

*Determination issued
Friday, December 3, 2004*

*Reasons issued
Friday, December 17, 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 OF LAMINATE FLOORING ORIGINATING IN OR EXPORTED FROM AUSTRIA, BELGIUM, THE PEOPLE'S REPUBLIC OF CHINA, FRANCE, THE FEDERAL REPUBLIC OF GERMANY, LUXEMBOURG AND THE REPUBLIC OF POLAND AND THE SUBSIDIZING OF LAMINATE FLOORING 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 of laminate flooring in thickness ranging from 5.5 mm to 13.0 mm (other than laminate hardwood flooring where the hardwood component exceeds 2.0 mm in thickness) originating in or exported from Austria, Belgium, the People's Republic of China, France, the Federal Republic of Germany, Luxembourg and the Republic of Poland and the subsidizing of laminate flooring in thickness ranging from 5.5 mm to 13.0 mm (other than laminate hardwood flooring where the hardwood component exceeds 2.0 mm in thickness) originating in or exported from the People's 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 October 4, 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.

The Canadian International Trade Tribunal finds that the question of whether there should be more than one class of goods merits further consideration. Therefore, the Canadian International Trade Tribunal requests the Canada Border Services Agency to collect separate information on the dumping and subsidizing of laminate flooring with a decorative layer constructed with (1) a surface layer of fibrous material (usually paper) or (2) a hardwood surface layer not exceeding 2.0 mm in thickness. The Canadian International Trade Tribunal also requests aggregated information for these two categories of products. As well, the Canadian International Trade Tribunal requests the information by both value and volume.

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Presiding Member

James A. Ogilvy
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The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On December 3, 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 alleged dumping of laminate flooring in thickness ranging from 5.5 mm to 13 mm (other than laminate hardwood flooring where the hardwood component exceeds 2 mm in thickness) originating in or exported from Austria, Belgium, the People's Republic of China (China), France, the Federal Republic of Germany (Germany), Luxembourg and the Republic of Poland and the alleged subsidizing of laminate flooring in thickness ranging from 5.5 mm to 13 mm (other than laminate hardwood flooring where the hardwood component exceeds 2 mm in thickness) originating in or exported from China (the subject goods).

2. On October 4, 2004, the President of the Canada Border Services Agency (CBSA) initiated an investigation into the alleged injurious dumping and subsidizing of the subject goods following a complaint filed by Uniboard Surfaces, Inc. (Uniboard) on August 13, 2004.

3. On October 5, 2004,² the Tribunal issued a notice of commencement of preliminary injury inquiry.

CBSA'S DECISION

4. The CBSA estimated margins of dumping for the period from July 1, 2003, to June 30, 2004. The CBSA's estimated overall weighted average margin of dumping of the subject goods reviewed, from actual import documentation for all countries, was 47.5 percent, expressed as a percentage of the export price.³ The estimated volume of dumped goods from each of the subject countries was not negligible, and the estimated weighted average margin of dumping for each country was not insignificant.

5. The estimated amount of subsidy over the same period for the producers of the subject goods, when expressed as a percentage of the export price, was 31.3 percent for China.⁴ The estimated volume of subsidized goods from China was not negligible, and the estimated amount of subsidy was not insignificant.⁵

SUBMISSIONS

Domestic Industry

6. In its complaint, Uniboard submitted that the dumped and subsidized subject goods have caused and threaten to cause injury to the domestic industry. In support of its allegations, Uniboard provided evidence of increased volumes of imports from the subject countries, loss of market share, lost sales, price erosion, reduced profitability and negative impact on investment.

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

2. C. Gaz. 2004.I.2840.

3. Tribunal Exhibit PI-2004-003, Administrative Record, Vol. 1B at 130.

4. *Ibid.* at 135.

5. Since the CBSA extended developing country status to China for purposes of its investigation, the higher thresholds for negligibility and insignificance for China were 4 percent and 2 percent respectively. See Tribunal Exhibit PI-2004-003, Administrative Record, Vol. 1B at 122.

Parties Opposed to the Complaint

7. The Tribunal received nine submissions from the following parties opposed to Uniboard's complaint: Groupe Novasia Inc. (Novasia); Unilin Flooring NV; Weyerhaeuser Company Limited; Torlys Inc.; Quality Craft Ltd.; Matériaux à bas prix ltée; Vöhringer Wood Products (Shanghai) Co., Ltd.; Sichuan Shengda Wooden Products Co., Ltd.; Asia Dekor Industries (Shenzhen) Co., Ltd.; Kronospan Luxembourg; Kaindl Flooring GmbH and Quickstyle Industries Inc. (collectively referred to as Kronospan); Inter Source Trading Corporation and EPI (Espace Production International).

8. Submissions were made on the scope of the product definition, domestic like goods, classes of goods, and Uniboard's imports and exports of like goods as causes of injury not attributable to the allegedly dumped and subsidized subject goods. Certain parties argued that the product definition of the subject goods was overly broad and requested that the Tribunal address this concern either on the basis of several classes of goods or by way of product exclusions. Generally, parties opposed submitted that the evidence does not disclose a reasonable indication that the alleged dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury. Kronospan requested that the Tribunal terminate its inquiry in respect of Luxembourg on the basis of negligible volumes of imports.

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.

10. Subsection 2(1) of *SIMA* defines "injury" as material injury to a domestic industry. It 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 question of injury.

11. With respect to like goods, the Tribunal notes that the CBSA found that the laminate flooring produced by the domestic industry competes directly with and has the same end use as the subject goods and that the goods produced in Canada and the subject goods are completely substitutable.⁶ On this basis, the CBSA concluded that the laminate flooring produced by the Canadian industry constitutes like goods to the subject goods.⁷ On the basis of the same evidence on the record at this stage, the Tribunal reaches the same conclusion, i.e. that the domestically produced goods are like the subject goods, in accordance with the definition of "like goods" found in section 2 of *SIMA*.

12. The Tribunal then considered the argument that the like goods consisted of more than one class of goods and that the Tribunal ought to conduct a separate injury analysis for each individual class. The parties opposed submitted, *inter alia*, that the definition of the subject goods is too broad. Novasia argued that, at a minimum, the goods should be divided into paper products and wood products. In this regard, arguments were made that, in cases where real wood is used instead of a paper photograph of wood, the method of

6. Tribunal Exhibit PI-2004-003, Administrative Record, Vol. 1B at 125.

7. *Ibid.* at 126.

manufacture differs, as do the physical characteristics. Novasia also drew a distinction between the two on the basis of installation techniques (e.g. do-it-yourself v. professional), type of core (e.g. high v. medium density) and markets (e.g. low end v. middle and high end).

13. The Tribunal notes that the CBSA indicated that, while the subject goods include a range of thicknesses, the CBSA was of the view that they are all manufactured in the same way, with the same or very similar materials, they all share the same decorative and functional uses, and they all compete for consumers in the same markets. The CBSA also concluded that there is a single class of goods based on use, characteristics or other factors.⁸ However, as the Tribunal has stated in past cases, it is not bound by the CBSA's determination on the issue of class of goods.⁹

14. The Tribunal finds that the arguments made in support of more than one class of goods merit further consideration. However, on the basis of the existing record, the Tribunal is unable to conclude that there is more than one class of goods. It will require further evidence before being able to come to a definitive conclusion. For the purpose of determining whether there is a reasonable indication of injury, the Tribunal will consider the goods as being composed of a single class of goods. Based on the evidence on the record at this stage, the Tribunal is also of the view that the goods produced by the domestic producer are "like goods" to the subject goods on the basis that their uses and characteristics closely resemble each other.

15. The Tribunal is aware that its decision to keep open the question of classes of goods will have implications for the conduct of this case. It therefore requests the CBSA to collect additional information on the dumping and subsidizing of the subject goods, as set out in the Tribunal's conclusion.

16. On the question of what constitutes the domestic industry, *SIMA* confers on the Tribunal the discretion to interpret the term "domestic industry" as meaning only the domestic producers that are not related to an exporter or importer of dumped or subsidized goods, or that are not importers of such goods. The Tribunal notes that, in its decision to initiate the investigation, the CBSA found Uniboard to be the sole Canadian manufacturer of like goods based on its own research and also on the information found in the complaint. The Tribunal conducted its own research and similarly concludes that Uniboard is the sole Canadian manufacturer and, thus, determines that Uniboard constitutes the domestic industry for purposes of its injury inquiry at this stage.

17. The Tribunal next considered the question of injury. In its complaint, Uniboard submitted that the dumping and subsidizing of the subject goods have caused material injury or are threatening to cause material injury to the domestic industry. The injury indicators cited are loss of market share, lost sales, price erosion, reduced profitability and negative impact on investment.

18. The Tribunal notes that the data available at this stage show that imports¹⁰ of the subject goods have increased considerably both in value and in percentage share of the total Canadian market between 2001 and 2003. At the same time, Uniboard's sales decreased, while the apparent Canadian market grew. On this basis, the Tribunal finds that the evidence on the record indicates a correlation between the increase in imports of the subject goods and the decline in Uniboard's sales and market share.

8. *Ibid.*

9. See *Fasteners* (28 June 2004), PI-2004-002 (CITT), para. 11.

10. The Tribunal notes that, according to the CBSA, the subject goods are properly classified under classification No. 4411.19.90.90 of the *Customs Tariff*. See Tribunal Exhibit PI-2004-003, Administrative Record, Vol. 1B at 125.

19. The evidence filed by Uniboard provides a number of specific examples of lost sales and price erosion. It also indicates that Uniboard lost several large customer accounts whose aggregated yearly purchases were significant.¹¹ The evidence also indicates that the presence of allegedly dumped and subsidized imports caused price erosion. These factors appear to have contributed to the domestic industry's low profitability on sales in the domestic market.

20. The Tribunal considered the arguments put forth by parties opposed regarding the large volume of profitable exports of like goods by Uniboard to the United States and determined that this issue would be best dealt with at the full-inquiry stage.

21. With respect to the submissions made by Kronospan and EPI regarding negligible volumes of imports from Luxembourg and France, the Tribunal notes that *SIMA* does not provide it with the authority to terminate its inquiry on the basis of negligibility at the preliminary injury stage of the inquiry. Rather, paragraph 35(1)(a) of *SIMA* provides only the CBSA with the authority to terminate on this basis. The Tribunal is therefore of the view that this issue would also be better dealt with at the full-inquiry stage.

22. With respect to the issue of the import statistics, the CBSA identified a number of discrepancies in the volume data collected through the Facility for Information Retrieval Management and by Statistics Canada. As a result, the CBSA, in its statement of reasons for initiating an investigation, considered the import statistics reported in terms of value to be more reliable than those reported in terms of volume. Keeping in mind these difficulties and the need to have volume data, the Tribunal requests that the CBSA make every effort to collect the required information on the basis of volume and value.

23. With respect to the other outstanding issues raised by the parties opposed, namely, Uniboard's imports of the subject goods from France and Germany, Uniboard's alleged self-infliction of injury, Uniboard's exports and specific product exclusions, the Tribunal is of the view that these issues would be best dealt with at the full-inquiry stage.

24. In light of the foregoing, the Tribunal is of the view that there is a reasonable indication that the allegedly dumped and subsidized imports from the subject countries had a negative impact on the domestic industry.

25. Further, based on the evidence, the Tribunal finds that there is a correlation between the overall increase in the allegedly dumped and subsidized imports and the injury factors described above and, more particularly, the loss of market share, lost sales and price erosion suffered by the domestic industry.

26. Finally, the Tribunal notes that it will address requests for product exclusions within the context of an inquiry under section 42 of *SIMA*, if a preliminary determination of dumping or subsidizing is issued by the CBSA.

CONCLUSION

27. The Tribunal determines 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.

28. The Tribunal finds that the question of whether there should be more than one class of goods merits further consideration. Therefore, the Tribunal requests the CBSA to collect separate information on the dumping and subsidizing of laminate flooring with a decorative layer constructed with (1) a surface layer of

11. Tribunal Exhibit PI-2004-003 (protected), Administrative Record, Vol. 2 at 27-31.

fibrous material (usually paper) or (2) a hardwood surface layer not exceeding 2 mm in thickness. The Tribunal also requests aggregated information for these two categories of products. As well, the Tribunal requests the information by both value and volume.

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