



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-2010-001

Steel Grating

*Determination issued  
Friday, November 19, 2010*

*Reasons issued  
Monday, December 6, 2010*

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

**STEEL GRATING ORIGINATING IN OR EXPORTED FROM  
THE PEOPLE'S REPUBLIC OF CHINA**

**PRELIMINARY DETERMINATION OF INJURY**

The Canadian International Trade Tribunal, pursuant to 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 metal bar grating of carbon, alloy or stainless steel, consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, 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 follows the notification, on September 20, 2010, that the President of the Canada Border Services Agency had initiated investigations 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.

Stephen A. Leach

Stephen A. Leach  
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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## STATEMENT OF REASONS

### BACKGROUND

1. On September 20, 2010, following a complaint filed on August 3, 2010, by Fisher & Ludlow Ltd. (Fisher & Ludlow), the President of the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping and subsidizing of metal bar grating of carbon, alloy or stainless steel, consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, originating in or exported from the People's Republic of China (China) (the subject goods).<sup>1</sup>
2. On September 21, 2010, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.
3. The complaint is supported by Borden Metal Products (Canada) Ltd. (Borden Metal).
4. Accurate Screen Ltd. (Accurate Screen), an importer of the subject goods, was a party to the preliminary injury inquiry, but it did not make a submission to the Tribunal.
5. On November 19, 2010, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,<sup>2</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 TO INITIATE INVESTIGATIONS

6. 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 were threatening to cause injury. Accordingly, the CBSA initiated investigations on September 20, 2010.
7. In coming to its decision to initiate dumping and subsidizing investigations, the CBSA used information with respect to the volume of dumped and subsidized goods for the period from January 1, 2009, to June 30, 2010. It estimated that imports from China accounted for 18 percent of all imports of steel grating into Canada during that period.
8. The CBSA estimated that 76 percent, by volume, of the subject goods had been dumped, with an estimated overall weighted average margin of dumping of 21 percent, expressed as a percentage of the export price.<sup>3</sup>
9. With respect to the subsidy investigation, the CBSA was of the view that 74 percent of the subject goods had been subsidized, with an estimated weighted average amount of subsidy equal to 16 percent of the export price of the subject goods.<sup>4</sup>

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1. Metal bar grating, from any source, that meets the product description will be hereinafter referred to as steel grating.
2. R.S.C. 1985, c. S-15 [*SIMA*].
3. Administrative Record, Vol. 1F at 286.
4. *Ibid.* at 290.

10. 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 and subsidized goods were not negligible.<sup>5</sup>

## SUBMISSIONS ON INJURY

### Complainant

11. Fisher & Ludlow submitted that the dumping and subsidizing of the subject goods had caused injury. In support of its allegations, it provided evidence of increased volumes of the subject goods, price undercutting, price depression, price suppression, lost sales, reduced revenues, a decline in gross margins, a reduction in profitability, underutilization and a decline in utilization of capacity, and loss of market share due to the dumping and subsidizing of the subject goods.

12. Fisher & Ludlow also submitted that the dumping and subsidizing of the subject goods threatened to cause injury. In this regard, it made reference to the imposition of anti-dumping and countervailing duties in the United States on steel grating from China and the likely threat of diversion of the subject goods into the Canadian market. According to Fisher & Ludlow, the threat is further exacerbated by Accurate Screen's recent opening of a new warehouse in Ontario. In addition, Fisher & Ludlow submitted that the vast size of production capacity in China, when contrasted with the estimated size of the Canadian market, demonstrates that there is sufficient freely disposable capacity to inundate the Canadian market with dumped and subsidized goods.

### Party Opposed to the complaint

13. No submission was received from any party opposed to the complaint.

## ANALYSIS

### Legislative Framework

14. 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 are threatening to cause injury.<sup>6</sup> In making its determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*.<sup>7</sup>

15. 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 ...". Therefore, the Tribunal must identify the like goods and the domestic industry that produces those goods before examining allegations of injury or threat of injury.

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5. *Ibid.* at 286, 290-91.

6. Subsection 34(2) of *SIMA* allows, as well, for a finding of a reasonable indication of "retardation", which, according to subsection 2(1), is defined as "... material retardation to the establishment of a domestic industry." Because a domestic industry for steel grating exists in Canada, "retardation" is not an issue in this preliminary injury inquiry.

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

## Like Goods and Classes of Goods

16. The CBSA has defined the subject goods as metal bar grating 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.

17. However, in assessing whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or threaten to cause injury to domestic producers of like goods, the Tribunal may consider whether the subject goods constitute one or more classes of goods and must define the scope of the domestically produced like goods in relation to the subject goods.

18. 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.

19. Fisher & Ludlow submitted that the subject goods constitute one class of goods and that domestically produced steel grating is like goods in relation to the subject goods.

20. On the issues of “like goods” and “classes of goods”, the CBSA opined as follows in its statement of reasons:

[29] Certain steel grating produced by the Canadian industry competes directly with and have the same end uses as the subject goods imported from China. Certain steel grating produced in Canada and China are completely substitutable. Therefore, the CBSA has concluded that the certain steel grating produced by the Canadian industry constitutes like goods to the subject goods.

[30] Subject and like goods cannot be subdivided into classes. They are made from the same input materials: carbon, alloy, or stainless steel. Although certain steel grating can be produced via different manufacturing processes (welding, hydraulic pressing or riveting), they are fully interchangeable. Whether subject or like goods, when sold, certain steel grating is sold in the same channels of distribution, to the same types of customers and in many cases, to the same customers. All subject and like goods form one class of goods.

21. 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, end uses, and whether the goods fulfill the same customer needs).<sup>8</sup>

22. On the basis of the evidence on the record in relation to these factors, and not having received any evidence or submissions to the contrary, the Tribunal finds it reasonable to conclude, for purposes of its preliminary injury inquiry, that the subject goods constitute a single class of goods and that domestically produced steel grating constitutes like goods in relation to the subject goods.

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

## Domestic Industry

23. In its decision to initiate the investigations, the CBSA estimated that Fisher & Ludlow accounted for more than half of the domestic production of steel grating.<sup>9</sup> The CBSA and Fisher & Ludlow identified Borden Metal as the only other known domestic producer of like goods, and it fully supports the complaint.<sup>10</sup>

24. Accordingly, on the basis of the evidence on the record of this preliminary injury inquiry, the Tribunal finds that Fisher & Ludlow and Borden Metal are the only domestic producers of the like goods and, thus, are considered to constitute the domestic industry. The Tribunal finds that Fisher & Ludlow itself accounts for a major proportion of the total domestic production of like goods.

## Volume of Dumped and Subsidized Goods

25. Fisher & Ludlow submitted that imports of the subject goods have entered the Canadian market in steadily increasing volumes since 2007. Specifically, Fisher & Ludlow indicated that import volumes of the subject goods were at low levels in 2007, but have increased substantially since 2008, notwithstanding the recession in 2009.

26. The import data compiled by the CBSA show that there was an increasing trend in the volume of imports of the subject goods between 2007 and the first six months of 2010.<sup>11</sup> The absolute volume of imports of the subject goods increased by 131 percent between 2007 and 2009.<sup>12</sup>

27. The increase in import volumes of the subject goods has coincided with a decline in overall import volumes of steel grating, including a decline in import volumes from the United States, the other main source of imports of steel grating. The volume of imports of the subject goods accounted for 4 percent of the total imports of steel grating in 2007 and increased to almost 11 percent in 2009, a period of recession, and to slightly more than 28 percent in the first six months of 2010.<sup>13</sup> During the same period, the import share of steel grating from the United States decreased from 96 percent to 70 percent.<sup>14</sup>

28. The volume of subject goods also increased relative to both the volume of domestic production and the volume of domestic consumption between 2007 and 2009. While the ratios calculated for 2007, 2008 and 2009 were low, they each showed a steady increase of 4 percentage points between 2007 and 2009.

29. Therefore, the Tribunal finds that the evidence discloses a reasonable indication that, from 2007 to the first half of 2010, the volume of imports of the subject goods increased significantly in absolute terms, and that, between 2007 and 2009, imports of the subject goods increased relative to the domestic production and consumption of steel grating.

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9. Administrative Record, Vol. 1F at 282.

10. *Ibid.*, Vol. 2 at 222-23, 285-86.

11. Administrative Record, Vol. 1F at 284, 291.

12. *Ibid.* at 291, Vol. 2 at 225.

13. Administrative Record, Vol. 1F at 284.

14. *Ibid.*



### Effect on the Price of Like Goods

30. Based on its knowledge of the Canadian market and insights into the North American market in general, Fisher & Ludlow submitted that, since 2006, the prices of the subject goods have been continually lower than the average prices of the like goods, resulting in the undercutting, depression and suppression of the prices of like goods. Further, Fisher & Ludlow submitted that the subject goods have caused it to lose orders. To illustrate the negative effect of competition from the subject goods on its selling prices during the period of examination and to substantiate its claims of price undercutting, depression, suppression and lost sales, Fisher & Ludlow provided confidential evidence, including specific import activity reports for the period from 2009 to the first half of 2010.

31. Fisher & Ludlow submitted data that show that the average selling prices of the like goods in the Canadian market increased by more than 10 percent between 2006 and 2008, while the selling prices of the subject goods remained relatively stable. In addition, Fisher & Ludlow submitted that the subject goods have had an increasing presence in the Canadian market since 2008 and that prices of the subject goods have been declining since that time.

32. In support of its allegation of price undercutting, Fisher & Ludlow submitted confidential anecdotal evidence of a specific instance where a Chinese producer offered to sell the subject goods at a price that was significantly lower than the average selling price of Fisher & Ludlow's like goods during the corresponding period.<sup>15</sup> In addition, the Tribunal finds that the average selling prices of the subject goods were consistently lower than the average selling prices of Fisher & Ludlow's like goods between 2006 and the first quarter of 2010. A comparison of the prices of the subject goods to the prices of the like goods shows a reasonable indication of significant price undercutting throughout the period.<sup>16</sup>

33. Fisher & Ludlow's confidential evidence also indicates that, in some instances, it lowered its prices to retain business.<sup>17</sup> In addition, between 2008 and the first quarter of 2010, domestic prices of the like goods declined significantly, while the prices of the subject goods declined moderately and remained consistently lower than the prices of the like goods.<sup>18</sup> The Tribunal finds that there is a reasonable indication that the subject goods have caused price depression.

34. With regard to price suppression, Fisher & Ludlow's confidential evidence shows that, during the period from 2008 to the first quarter 2010, Fisher & Ludlow experienced increased costs, which it did not pass on as price increases of the like goods.<sup>19</sup> The Tribunal finds that there is a reasonable indication that the expected price increase has not occurred as a result of competition from the lower-priced subject goods.

35. On the basis of the foregoing, the Tribunal finds that, for the purpose of this preliminary injury inquiry, 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.

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15. The evidence on the record suggests that the selling prices of the subject goods were adjusted by Fisher & Ludlow to include the cost of delivery to Canada, and it is on this basis that the Tribunal undertook its analysis. The Tribunal will examine this matter in the context of an injury inquiry, should there be one. Administrative Record, Vol. 2 at 57.

16. Administrative Record, Vol. 1 at 62, Vol. 2 at 56.

17. Administrative Record, Vol. 1 at 67, 68, Vol. 2 at 61, 62.

18. Administrative Record, Vol. 1 at 62, Vol. 2 at 56.

19. Administrative Record, Vol. 2 at 56, 133, 134, 136.

### Impact on the Domestic Industry

36. Fisher & Ludlow submitted that the resultant impact of the dumping and subsidizing of the subject goods on the state of the domestic industry is injury in the form of reduced prices, sales, revenues, market share, gross margins, net income and capacity utilization. Fisher & Ludlow submitted that, while most of its sales are in Western Canada, particularly in British Columbia and Alberta, it is feeling the impact throughout Canada. Fisher & Ludlow also noted that its financial performance had declined significantly since 2008.

37. The evidence shows that the market share of the subject goods increased from almost nil in 2006 and 2007 to an estimated 15 percent of the Canadian market during the first three months of 2010.<sup>20</sup> As previously noted, the evidence also shows that sales volumes of the subject goods increased by 131 percent between 2007 and 2009.<sup>21</sup> Concurrently, the Canadian apparent market decreased by 23 percent, and the domestic industry's share of the market declined, as its sales volumes decreased by 27 percent. The market share of the United States remained relatively stable, while its import volumes declined by 19 percent during this period.<sup>22</sup> Given the above evidence, there is a reasonable indication that the domestic industry's decreased market share was due to the dumping and subsidizing of the subject goods.

38. There was a significant reduction in domestic production and an overall significant decline in domestic sales between 2006 and the first quarter of 2010. The total domestic production of steel grating declined by 51 percent from 2006 to 2009. As previously noted, the Tribunal reviewed Fisher & Ludlow's confidential reports which showed instances where it had to lower its selling prices in order to retain sales. In other cases, the reports show sales lost to lower-priced subject goods.

39. The evidence shows a deterioration in Fisher & Ludlow's financial performance, at both the gross margin level and the net income level, over the period.<sup>23</sup> The evidence also indicates significant capacity underutilization and decline in capacity utilization between 2008 and the first quarter of 2010.<sup>24</sup>

40. Although there was very little evidence, if any, concerning the impact on other relevant economic factors and indices, such as productivity, return on investment, cash flow, employment and wages, the Tribunal nevertheless finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

### Other Factors

41. Fisher & Ludlow submitted that prices of the subject goods are not responsive to changes in the exchange rate. It submitted that the renminbi was steady against the Canadian dollar in 2006 and 2007, but appreciated in 2008 and 2009, and that the subject goods should therefore have become more expensive, not less expensive.

42. Fisher & Ludlow admitted that the 2008-2009 recession had an impact on the overall Canadian demand for steel grating, but nevertheless attributed the injury that it experienced to the dumping and subsidizing of the subject goods. Fisher & Ludlow stated that, while the estimated size of the Canadian

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20. Administrative Record, Vol. 1 at 59, 62, 65, 73, Vol. 1F at 291.

21. Administrative Record, Vol. 1F at 291, Vol. 2 at 225.

22. Administrative Record, Vol. 2 at 33, 222, 225, 286-87.

23. Administrative Record, Vol. 1 at 63.

24. *Ibid.* at 68, 69, Vol. 2 at 62, 63.

market declined by an estimated 23.0 percent in 2009, imports of the subject goods increased by 100 percent in that year, from 3.4 percent of the market to almost 9.0 percent, largely at the expense of the domestic industry.

43. The Tribunal is of the view that these factors may have had an impact on the domestic industry. However, the limited evidence on the record regarding the impact that these other factors might have had on the domestic industry is insufficient to negate the Tribunal's conclusion that the overall 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 or other factors and their relative importance.

## CONCLUSION

44. On the basis of the foregoing analysis, the Tribunal determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury.

Stephen A. Leach  
Stephen A. Leach  
Presiding Member

Serge Fréchette  
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