



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2011-001

Pup Joints

*Determination issued
Monday, November 14, 2011*

*Reasons issued
Tuesday, November 29, 2011*

TABLE OF CONTENTS

PRELIMINARY DETERMINATION OF INJURY	i
STATEMENT OF REASONS	1
BACKGROUND.....	1
CBSA'S DECISION TO INITIATE INVESTIGATIONS	1
SUBMISSIONS ON INJURY.....	2
Complainant.....	2
Parties Opposed to the Complaint	2
ANALYSIS	2
Legislative Framework.....	2
Like Goods and Classes of Goods.....	3
Domestic Industry.....	4
Volume of Dumped and Subsidized Goods	4
Effect on the Price of Like Goods	5
Impact on the Domestic Industry.....	6
Other Factors.....	7
CONCLUSION.....	7

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

**PUP JOINTS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S
REPUBLIC OF CHINA**

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to 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 oil country tubular goods pup joints, made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 4 1/2 inches (60.3 mm to 114.3 mm), in all grades, in lengths from 2 feet to 12 feet (61 cm to 366 cm), 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 12, 2011, 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 or retardation or are threatening to cause 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 12, 2011, following a complaint filed on July 25, 2011, by Dover Corporation (Canada) Limited—Alberta Oil Tool Division (AOT), the President of the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping and subsidizing of oil country tubular goods (OCTG) pup joints, made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 4 1/2 inches (60.3 mm to 114.3 mm), in all grades, in lengths from 2 feet to 12 feet (61 cm to 366 cm), originating in or exported from the People's Republic of China (China) (the subject goods).
2. On September 13, 2011, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.
3. The complaint is supported by Tenaris Canada Inc. (Tenaris).¹
4. The complaint is opposed by CMUS Steel Inc. (CMUS), Imex Canada Inc., Pacrim Steel ULC, Weatherford Canada Partnership and Mr. Zach St. Croix.
5. On November 14, 2011, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,² 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 12, 2011.
7. The CBSA's period of investigation (POI) with respect to the alleged dumping was from July 1, 2010, to June 30, 2011. The CBSA was of the view that the subject goods had been dumped, with an estimated overall weighted average margin of dumping of 32.4 percent, expressed as a percentage of the export price.³
8. The CBSA's POI with respect to the alleged subsidizing was from January 1, 2010, to June 30, 2011. The CBSA was of the view that the subject goods had been subsidized, with an estimated amount of subsidy equal to 13.3 percent of the export price of the subject goods.⁴
9. 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 goods and subsidized goods were not negligible.⁵

1. Tribunal Exhibit PI-2011-001-05, Administrative Record, Vol.1B at 411.
2. R.S.C. 1985, c. S-15 [*SIMA*].
3. Tribunal Exhibit PI-2011-001-05, Administrative Record, Vol. 1B at 418-19.
4. *Ibid.* at 426.
5. *Ibid.* at 419, 426.

SUBMISSIONS ON INJURY

Complainant

10. AOT 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, loss of employment, and a reduction in return on investment and loss of market share due to the dumping and subsidizing of the subject goods.

11. AOT further 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 on tubular goods in other jurisdictions. It also referred to the imposition of such duties, in Canada, on other OCTG from China as a result of previous Tribunal findings in Inquiry No. NQ-2007-001⁶ and Inquiry No. NQ-2009-004⁷. According to AOT, these inquiries demonstrate the ability of exporters to rapidly increase exports to the Canadian market and the ability and willingness of Chinese producers to switch from one OCTG category to another.

Parties Opposed to the Complaint

12. Mr. St. Croix and CMUS submitted that AOT has not supported its claim of injury and that the evidence does not disclose a reasonable indication of injury, retardation or threat of injury. Among other things, opposing parties alleged that the Chinese industry is more efficient and that its integrated supply chain network means that it is superior in terms of manufacturing costs and quality and that the domestic industry has been unable to remain globally competitive due to a lack of investment.

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 there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury. In making its determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*.⁸

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 ...". 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.

6. *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008) (CITT) [*Oil and Gas Well Casing*].

7. *Oil Country Tubular Goods* (23 March 2010) (CITT).

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

Like Goods and Classes of Goods

15. The CBSA has defined the subject goods as OCTG pup joints 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.

16. 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.

17. 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.

18. Mr. St. Croix and CMUS submitted that there are multiple classes of goods, specifically seamless tubing pup joints, electric resistance welding (ERW) tubing pup joints, forged external upset end pup joints and machined external upset end pup joints.

19. AOT submitted that the subject goods constitute one class of goods and that domestically produced pup joints are like goods in relation to the subject goods. It stated that, in previous OCTG inquiries, the Tribunal treated seamless and ERW OCTG as a single class of goods. AOT submitted that it produces pup joints using both forged and machined ends and that the resultant products are functionally identical and meet the same American Petroleum Institute (API) requirements.

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

[33] Pup joints produced by the domestic industry compete directly with and have the same end uses as the subject goods imported from China. The goods produced in Canada and China are completely substitutable. Therefore, the CBSA has concluded that the pup joints produced by the Canadian industry constitute like goods to the subject goods. Pup joints can be considered as a single class of goods notwithstanding that the subject goods may be further differentiated in terms of seamless or welded.⁹

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).¹⁰

22. AOT is correct in noting that, in previous OCTG inquiries, the Tribunal has considered seamless and ERW OCTG to be a single class of goods or like goods to one another.¹¹ The Tribunal finds that there is no evidence on the record of this preliminary injury inquiry to cause it to take a different view from that taken in previous inquiries concerning OCTG.

9. Tribunal Exhibit PI-2011-001-05, Administrative Record, Vol. 1B at 414.

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

11. *Oil and Gas Well Casing; Oil Country Tubular Goods*.

23. The Tribunal notes that, while the production methods may differ, the resulting pup joints compete with one another in the market, are sold through the same channels of distribution and have the same end uses.

24. On the basis of the foregoing, the Tribunal is of the view that pup joints comprise a single class of goods for the purpose of this preliminary injury inquiry.

25. Turning to like goods, the Tribunal finds that pup joints produced by domestic producers compete with the subject goods and are like goods in relation to the subject goods.

Domestic Industry

26. In its decision to initiate the investigations, the CBSA was of the view that AOT accounted for the major proportion of known production of like goods.¹² The CBSA identified Tenaris as the only other known domestic producer of like goods and stated that Tenaris supports the complaint.¹³

27. The Tribunal notes that, while there are additional firms in Canada that have the API certification required to produce pup joints, the evidence indicates that these firms are not currently producing pup joints.¹⁴

28. Accordingly, on the basis of the evidence on the record of this preliminary injury inquiry, the Tribunal finds that AOT and Tenaris constitute the domestic industry. The Tribunal also finds that AOT itself accounts for a major proportion of the total domestic production of like goods.

Volume of Dumped and Subsidized Goods

29. AOT submitted that imports of the subject goods have entered the Canadian market in increasing volumes since 2008. AOT indicated that import volumes of the subject goods did not decline with the market downturn in 2009 and that the share of imports represented by the subject goods has also increased since 2008.

30. The import data compiled by the CBSA support AOT's claim and show that there was a substantial increase in the volume of imports of the subject goods since 2008.¹⁵ The absolute volume of imports of the subject goods increased by 525 percent between 2008 and 2010.¹⁶

31. The initial increase in import volumes of the subject goods coincided with a decline in drilling activity in 2009. As drilling activity rebounded, the presence of the subject goods remained robust. The volume of imports of the subject goods accounted for a significant share of total imports of pup joints in 2008. The share of the subject goods increased by approximately 35 percentage points between 2008 and 2010 and increased by an additional 5 percentage points in the first quarter of 2011 compared to 2010.¹⁷

12. Tribunal Exhibit PI-2011-001-05, Administrative Record, Vol. 1B at 414-15.

13. *Ibid.* at 411.

14. Tribunal Exhibit PI-2011-001-05, Administrative Record, Vol. 1 at 98-100; Tribunal Exhibit PI-2011-001-3.02, Administrative Record, Vol. 2C at 8.

15. Tribunal Exhibit PI-2011-001-3.02, Administrative Record, Vol. 2C at 19.

16. *Ibid.*

17. *Ibid.*

32. The volume of subject goods in the Canadian market also increased relative to both the volume of domestic production and the volume of domestic consumption between 2008 and 2010. While the ratios calculated for 2008, 2009 and 2010 fluctuated year to year; the ratios for both 2009 and 2010 showed an increase relative to 2008. Overall, there was an increase of more than 20 percentage points between 2008 and 2010.

33. In light of the above, the Tribunal finds that the evidence discloses a reasonable indication that, from 2008 to the first quarter of 2011, the absolute volume of imports of the subject goods increased significantly, and that, between 2008 and 2010, imports of the subject goods increased relative to the domestic production and consumption of pup joints.

Effect on the Price of Like Goods

34. AOT submitted that prices of the subject goods undercut those of its domestically produced pup joints and that this resulted in price suppression and price depression.

35. AOT provided specific accounts of instances in the marketplace where it was aware or informed of the availability of the subject goods at prices that undercut its own prices for pup joints. In particular, it referred to the pricing of the subject goods being sold by TriAlta and WestCan and to reports from a number of its own purchasers that had informed it of the availability of lower-priced subject goods.

36. AOT alleged that TriAlta offered the subject goods in 2009 at prices that undercut AOT's prices. AOT submitted that this caused it to reduce its own prices and prevented it from implementing any price increases.

37. AOT submitted that, even after reducing its prices in response to TriAlta's prices, it became aware that prices of the subject goods offered by another competitor, WestCan, were also lower than its prices for domestically produced pup joints.

38. AOT also submitted that it lost sales to an important customer due to the fact that the customer was able to purchase the subject goods at prices that were below AOT's already discounted prices. AOT was also made aware of the availability of the subject goods landed in Canada prior to the winter 2011 drilling season and was informed by customers that the prices of those goods undercut those offered by AOT.

39. AOT also submitted that it had suffered price suppression. It noted that the cost of tubing used to produce J55 pup joints for sale in the winter of 2011 had increased from the previous year, but AOT had been unable to implement any price increase since 2009.

40. The Tribunal compared the average net selling value per pup joint sold by AOT, during the period from 2008 to the first quarter of 2011, with the average unit export values provided by the CBSA.¹⁸ On the basis of this comparison and considering the specific examples of competition cited by AOT in its evidence and referred to above, the Tribunal is of the view that there is a reasonable indication that the subject goods undercut the domestically produced goods.¹⁹ Further, the Tribunal is of the view that it is reasonable to expect that such undercutting would result in depression of the prices of like goods, as was apparent in the price reduction implemented by AOT in late 2009.

18. Tribunal Exhibit PI-2011-001-3.01, Administrative Record, Vol. 2 at 113; Tribunal Exhibit PI-2011-001-3.02, Vol. 2C at 19, 50.

19. Tribunal Exhibit PI-2011-001-3.01, Administrative Record, Vol. 2 at 28-32, Vol. 2B at 220.

41. With respect to price suppression, the Tribunal notes that, although the evidence submitted by AOT shows that the price of J55 input tubing declined during the first half of 2009, especially compared to 2008, input prices increased during 2009 and the first half of 2010, before declining again in the latter half of 2010. The Tribunal is of the view that the evidence shows that, on average, inputs purchased in 2010 would have cost more than inputs purchased in 2009.²⁰ The Tribunal is satisfied that, on the basis of the evidence, it is reasonable to conclude that prices of the subject goods could have suppressed the prices of the like goods as input costs were increasing.

42. On the basis of the foregoing, the Tribunal finds that 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.

Impact on the Domestic Industry

43. AOT submitted that it suffered lost sales and reduced market share as a result of the dumping and subsidizing of the subject goods. It submitted that it first became concerned about the effects of the subject goods during the 2009 drilling season when its sales of pup joints declined at a faster rate than its sales of all other OCTG products. It was during this time that AOT became aware that its competitors were selling the subject goods at prices which undercut AOT's prices. AOT also submitted that its sales to its largest customer fell significantly in 2011, as that customer began to import the subject goods.

44. AOT compared its financial results of its sales of pup joints to its financial results of its sales of all OCTG products to demonstrate that the financial performance of pup joints trails that of the firm as a whole. AOT alleged that this is due to the dumped and subsidized subject goods.²¹ AOT submitted that its financial performance with regard to pup joints sold in the first quarter of 2011 had deteriorated compared to 2010, despite an increase in drilling activity, and that performance could be expected to erode as 2011 progressed.

45. AOT submitted that the subject goods also had a negative impact on its capacity utilization, employment and return on investment.

46. The Tribunal examined the evidence submitted by AOT and observed that AOT's performance on the basis of a number of the injury indicators declined from 2008 to 2010, and/or in the first quarter of 2011 compared to the first quarter of 2010. The Tribunal is of the view, on the basis of its comparison of AOT's sales data with import data provided by the CBSA, that there is a reasonable indication that the domestic producers have been losing market share since 2008.²² The Tribunal also finds that the specific allegations of sales lost to certain accounts provide a reasonable indication that the subject goods have resulted in lost sales for AOT.

47. On the basis of its review of the evidence before it, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

20. Tribunal Exhibit PI-2011-001-3.01, Administrative Record, Vol. 2A at 240.

21. Tribunal Exhibit PI-2011-001-3.01, Administrative Record, Vol. 2B at 242.

22. Tribunal Exhibit PI-2011-001-3.01, Administrative Record, Vol. 2 at 107-113; Tribunal Exhibit PI-2011-001-3.02, Vol. 2C at 19, 50.

Other Factors

48. Mr. St. Croix and CMUS submitted that the production methods used by AOT are inefficient compared to those used by producers of the subject goods. Mr. St. Croix argued that this leads to higher input and production costs.

49. Mr. St. Croix also submitted that AOT has not made the investment that would have allowed its manufacturing facilities to remain globally competitive.

50. AOT disagreed and submitted that its production method results in certain efficiencies and cost advantages compared to alternate methods of production. It submitted that, even if its production method were inefficient, it would not justify the ability of Chinese exporters to obtain a competitive advantage by dumping and subsidizing.

51. The Tribunal is of the view that, while there may be some variances in efficiency with regard to different methods of production, this does not negate the Tribunal's conclusion that, overall, the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury. The Tribunal notes, however, that, in the context of an inquiry under section 42 of *SIMA*, it will be in a position to fully explore whether the domestic industry has been injured by factors unrelated to the dumped and subsidized goods.

CONCLUSION

52. 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 or retardation or are threatening to cause injury.

Stephen A. Leach
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