

Ottawa, Friday, January 17, 2003

Interim Review No. RD-2002-003

IN THE MATTER OF an interim review, under subsection 76.01(1) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on July 2, 1999, in Inquiry No. NQ-98-004, concerning:

**CERTAIN FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET
PRODUCTS ORIGINATING IN OR EXPORTED FROM FRANCE, ROMANIA,
THE RUSSIAN FEDERATION AND THE SLOVAK REPUBLIC**

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76.01(1) of the *Special Import Measures Act*, has conducted an interim review of its finding made on July 2, 1999, in Inquiry No. NQ-98-004.

Pursuant to paragraph 76.01(5)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues, with amendment, its finding made on July 2, 1999, in Inquiry No. NQ-98-004, concerning certain flat hot-rolled carbon and alloy steel sheet and strip, including secondary or non-prime material, originating in or exported from France, Romania, the Russian Federation and the Slovak Republic.

The finding is amended to exclude:

Hot-rolled steel sheet in coil, mill-edge/slit-edge, with hardenable manganese-boron steel for heat treatment, manufactured to the “Solbor 30MnB5” specification, or equivalent, and imported into Canada under classification Nos. 7226.91.90.90 and 7225.30.90.00, for use in the manufacture of agricultural disks and sweeps.

The chemical requirements of the “Solbor 30MnB5” specification include the following elements: 0.27-0.33% carbon; 1.15-1.45% manganese; max. 0.015% phosphorus; max. 0.005% sulphur; 0.200-0.300% silicon; min. 0.020% aluminum; 0.0010-0.0040% boron; various proprietary combinations of titanium, chromium, nitrogen, copper and nickel, with copper and nickel not to exceed 0.15%. The “Solbor 30MnB5” specification must also be treated to produce a minimum of 80% globular sulphide inclusions and calcium must be the primary element used for inclusion shape control, with a typical range of 0.002-0.005%. If cerium is used for sulphide inclusion shape

control, the cerium/sulphur ratio must be 3.0 minimum. Use of zirconium for sulphide inclusion shape control is not permissible.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

Ellen Fry
Ellen Fry
Member

Michel P. Granger
Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.



Ottawa, Friday, January 31, 2003

Interim Review No. RD-2002-003

IN THE MATTER OF an interim review, under subsection 76.01(1) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on July 2, 1999, in Inquiry No. NQ-98-004, concerning:

**CERTAIN FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET
PRODUCTS ORIGINATING IN OR EXPORTED FROM FRANCE, ROMANIA,
THE RUSSIAN FEDERATION AND THE SLOVAK REPUBLIC**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
RICHARD LAFONTAINE, Member
ELLEN FRY, Member

STATEMENT OF REASONS

BACKGROUND

On October 4, 2002, the Canadian International Trade Tribunal (the Tribunal) received a request for an interim review of its finding made on July 2, 1999, in Inquiry No. NQ-98-004, concerning certain flat hot-rolled carbon and alloy steel sheet and strip, including secondary or non-prime material, originating in or exported from France, Romania, the Russian Federation and the Slovak Republic. If not continued, the finding will expire on July 1, 2004. The applicants, Usinor Canada Inc. (Usinor) and Sollac, Méditerranée S.A. (Sollac), requested an interim review for the exclusion of “hot-rolled steel sheet in coil, mill-edge/slit-edge, with hardenable manganese-boron steel for heat treatment, manufactured to the ‘Solbor 30MnB5’ specification”, which they alleged was not imported at the time of the finding.

The Tribunal decided that the request was properly documented and, accordingly, pursuant to subrule 70(2) of the *Canadian International Trade Tribunal Rules*,¹ on October 16, 2002, provided the parties to the 1999 inquiry with a copy of the applicants’ request. On November 7, 2002, Algoma Steel Inc. (Algoma), Ispat Sidbec Inc. (Ispat Sidbec), Dofasco Inc. (Dofasco), IPSCO Inc. (IPSCO) and Stelco Inc. (Stelco) filed submissions opposing an interim review. Usinor and Sollac responded to the domestic producers’ submissions on November 15, 2002.

Section 76.01 of the *Special Import Measures Act*² gives the Tribunal the jurisdiction to conduct an interim review if the applicants satisfy the Tribunal that the review is warranted. The Tribunal’s *Guideline on Interim Reviews*, which does not constrain its discretion, but outlines its normal practice, indicates that an interim review may be warranted where there is a reasonable indication that sufficient new facts have arisen or that there has been a change in the circumstances that led to the finding. This is consistent with rule 72 of the Rules of Procedure, which authorizes the Tribunal to request information on these issues in order to decide whether an interim review is warranted. Therefore, when the Tribunal receives a request for an interim review, it normally considers whether there are new facts or changed circumstances.

1. S.O.R./91-499 [hereinafter Rules of Procedure].
2. R.S.C. 1985, c. S-15 [hereinafter SIMA].

The applicants' submissions, which were not contradicted by the domestic producers, indicated that the products in issue are new products for which there was no market in Canada prior to 2000. Based on these submissions, the Tribunal decided that there had been a change in circumstances since the 1999 finding to warrant an interim review pursuant to subsection 76.01(1) of SIMA. The purpose of the interim review was to determine if the finding should be amended to exclude the product for which an exclusion has been requested.

In its notice of commencement of interim review issued on November 29, 2002, the Tribunal requested submissions from the domestic producers and gave the applicants an opportunity to respond to the domestic producers' submissions. The Tribunal asked the domestic producers to address certain matters, including: whether there are domestic goods that are substitutable for the product for which an exclusion has been requested; whether any changes should be made to the description of the product set out in the request; the need for a generic description of the product (they were also asked to produce such a description, if the need existed); and other end uses of the proprietary or generic product. The Tribunal also asked for submissions on whether it should conduct the interim review by way of written submissions or a hearing.

In their original request and their submissions filed on November 15, 2002, Usinor and Sollac argued that the product for which an exclusion had been requested is not produced by, and is not commercially available from, the domestic producers. The applicants provided documentation and letters from North American Tillage Tools Co. (NATT), the end user of the product, that gave details about the chemical composition, physical characteristics, manufacturing process, end use and availability of the product in the market. NATT also stated that no Canadian producer is able to manufacture the product in issue or an acceptable substitute.

Algoma, Ispat Sidbec, Dofasco and IPSCO filed submissions with the Tribunal in which they agreed that they do not or cannot presently manufacture the product in issue or a substitutable product and, therefore, they consented or were not opposed to the exclusion of the following product from the finding, provided the finding remains otherwise unchanged:

Hot-rolled sheet in coil, mill-edge/slit-edge, with hardenable manganese-boron steel for heat treatment, manufactured by Sollac Méditerranée S.A. or its successors to the "Solbor 30MnB5" specification and imported into Canada under tariff codes 7226.91.90.90 and 7225.30.90.00 for use in the manufacture of agricultural disks and sweeps.

Stelco also consented to the exclusion without specifying whether it can or does produce the product. Moreover, Stelco further limited its consent to products, as defined by the other producers, "for sale to [NATT]".

All the domestic producers agreed to proceed with the interim review by way of written submissions.

Usinor and Sollac filed a reply submission in which they argued that, in view of the evidence on the record and considering the consents filed by the domestic producers, the finding should be amended to exclude the product for which they requested an exclusion, as modified by Algoma, Ispat Sidbec, Dofasco and IPSCO. However, Usinor and Sollac argued that a reference to a specific end user, NATT, as proposed by Stelco, is unnecessary and unwarranted, as the products cannot be produced by the domestic industry. In their view, limiting the end use to the "manufacture of agricultural disks and sweeps", as suggested by four of the domestic producers, would properly circumscribe the consent. Usinor and Sollac also agreed to proceed by way of written submissions.

Having received no submissions on whether or how the definition could be made more generic, the Tribunal requested a more detailed public description of the physical and chemical specifications and the characteristics of the “Solbor 30MnB5” specification from Usinor and Sollac. The domestic producers were also given an opportunity to respond. Usinor and Sollac filed a submission in which they provided the requested information. Algoma, Ispat Sidbec and Dofasco filed reply submissions with the Tribunal, in which they agreed with the wording of the product description provided by the applicants. One domestic producer expressed its concerns about a more generic definition of the product, while another domestic producer expressed its concerns about the fact that there was no specification regarding the chemical requirements of certain elements used in the manufacture of the product in issue.

REASONS FOR DECISION

The evidence indicates that the domestic producers do not manufacture the product for which an exclusion has been requested or an equivalent. The Tribunal notes that the domestic producers either consented or were not opposed to the exclusion.

Consequently, the Tribunal finds that amending its finding to exclude the product for which an exclusion has been requested is an appropriate exercise of its jurisdiction under SIMA.

Despite requests to parties in its notice of commencement of interim review, the Tribunal received no submissions on whether or how the definition of the excluded product could be made more generic. Indeed, all the domestic producers proposed definitions that actually narrowed the scope of the proposed product exclusion by restricting it to certain end uses, to the products of a specific supplier and, in one case, to a specific Canadian end user for its exclusive use. Usinor and Sollac had originally proposed a product exclusion definition that included a trademarked product but that was otherwise free of restrictions, such as specific end uses, suppliers or end users. However, following the domestic producers’ submissions, they agreed to further restrictions.

In determining how to define the product to be excluded, the Tribunal gave careful consideration to the views expressed by the parties. However, the Tribunal is of the view that any exclusion to a finding, whether provided at the time of the original finding or, subsequently, upon the completion of a review, should normally be defined as generically as possible to avoid potential trade distortions and unfair competitive advantages. Accordingly, the Tribunal avoided reference to restrictions relating to producers and end-users. The Tribunal has decided to leave the “Solbor” trademark in the definition of the exclusion as well as end uses. However, it has described the specifications of the trademarked product in as much detail as possible and has also added the term “or equivalent” in order to allow any other potential suppliers to benefit from this exclusion in offering this product in Canada.

For the foregoing reasons, the Tribunal determines that, pursuant to paragraph 76.01(5)(b) of SIMA, the finding in Inquiry No. NQ-98-004 should be amended to exclude the following product:

Hot-rolled steel sheet in coil, mill-edge/slit-edge, with hardenable manganese-boron steel for heat treatment, manufactured to the “Solbor 30MnB5” specification, or equivalent, and imported into Canada under classification Nos. 7226.91.90.90 and 7225.30.90.00, for use in the manufacture of agricultural disks and sweeps.

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exceed 0.15%. The “Solbor 30MnB5” specification must also be treated to produce a minimum of 80% globular sulphide inclusions and calcium must be the primary element used for inclusion shape control, with a typical range of 0.002-0.005%. If cerium is used for sulphide inclusion shape control, the cerium/sulphur ratio must be 3.0 minimum. Use of zirconium for sulphide inclusion shape control is not permissible.

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