



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim Review Nos. RD-2004-003
to RD-2004-007

Certain Stainless Steel Round Bar

*Order issued
Tuesday, January 18, 2005*

*Reasons issued
Wednesday, February 2, 2005*

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IN THE MATTER OF interim reviews, under subsection 76.01(1) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on October 27, 2000, in Inquiry No. NQ-2000-002, and of its order made on September 3, 2003, in Expiry Review Nos. RR-2002-003 and RR-2002-004, continuing, with amendment, its finding made on September 4, 1998, in Inquiry No. NQ-98-001, and its finding made on June 18, 1999, in Inquiry No. NQ-98-003;

AND FURTHER TO the Canadian International Trade Tribunal's decision to combine the above-mentioned interim reviews concerning:

**CERTAIN STAINLESS STEEL ROUND BAR ORIGINATING IN OR
EXPORTED FROM BRAZIL, INDIA, THE FEDERAL REPUBLIC OF
GERMANY, FRANCE, ITALY, JAPAN, SPAIN, SWEDEN, CHINESE TAIPEI,
THE UNITED KINGDOM AND THE REPUBLIC OF KOREA**

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 October 27, 2000, in Inquiry No. NQ-2000-002, concerning the dumping in Canada of certain stainless steel round bar originating in or exported from Brazil and the subsidizing of certain stainless steel round bar originating in or exported from Brazil and India and of its order made on September 3, 2003, in Expiry Review Nos. RR-2002-003 and RR-2002-004 (as amended by its order made on January 26, 2004, in Interim Review No. RD-2003-001, and its order made on August 6, 2004, in Interim Review No. RD-2004-001) continuing, with amendment, its finding made on September 4, 1998, in Inquiry No. NQ-98-001 (as amended by its order made on March 5, 2003, in Interim Review No. RD-2002-004) and its finding made on June 18, 1999, in Inquiry No. NQ-98-003, concerning the dumping in Canada of certain stainless steel round bar originating in or exported from the Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Chinese Taipei, the United Kingdom and the Republic of Korea.

Pursuant to paragraph 76.01(5)(a) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the finding made on October 27, 2000.

Pursuant to paragraph 76.01(5)(a) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the order made on September 3, 2003.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Patricia M. Close
Patricia M. Close
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

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Patricia M. Close, Member
Meriel V. M. Bradford, Member

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Registrar: Susanne Grimes

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Corus Engineering Steels

Velan Inc.

Ugine Stainless & Alloys Inc. and Ugine S.A.

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STATEMENT OF REASONS

BACKGROUND

1. The finding and order that are the subject of the requests for an interim review are the Tribunal's finding made on October 27, 2000, in Inquiry No. NQ-2000-002, concerning the dumping in Canada of certain stainless steel round bar originating in or exported from Brazil and the subsidizing of certain stainless steel round bar originating in or exported from Brazil and India (the Finding), and its order made on September 3, 2003, in Expiry Review Nos. RR-2002-003 and RR-2002-004 (as amended by its order made on January 26, 2004, in Interim Review No. RD-2003-001, and its order made on August 6, 2004, in Interim Review No. RD-2004-001) continuing, with amendment, its finding made on September 4, 1998, in Inquiry No. NQ-98-001 (as amended by its order made on March 5, 2003, in Interim Review No. RD-2002-004) and its finding made on June 18, 1999, in Inquiry No. NQ-98-003 concerning the dumping in Canada of certain stainless steel round bar of sizes 25 mm in diameter up to 570 mm in diameter inclusive originating in or exported from the Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Chinese Taipei, the United Kingdom and the Republic of Korea (the Order).

2. On September 24, 2004, the Tribunal received two requests from Sumitomo Canada Limited (Sumitomo) for an interim review of the Finding and the Order to exclude stainless steel round bar with a diameter from 25 mm to 130 mm in Grades 304, 304L, 316, 316L, 303 and 410 (Interim Review Nos. RD-2004-003 and RD-2004-004). On October 6, 2004, the Tribunal received a request from Corus Engineering Steels (Corus) for an interim review of the Order to exclude all subject goods originating in or exported from the United Kingdom (Interim Review No. RD-2004-005). On October 13, 2004, the Tribunal received a request from Velan Inc. for an interim review of the Finding and the Order to exclude all subject goods (Interim Review No. RD-2004-006). Each request was on the ground that domestic production of stainless steel round bar had ceased.

3. On October 25, 2004, the Tribunal decided that the requests were properly documented, and on November 2, 2004, invited comments from the parties to the inquiry and the review that resulted in the Finding and the Order. On November 17, 2004, Atlas Specialty Steels Inc. (Atlas), which was the sole domestic producer at the time of the Finding and the Order, advised the Tribunal that it was endeavouring to restart its facility but that it was not in a position to provide further information to the Tribunal. In addition, on November 15, 2004, the Tribunal received a request from Ugine Stainless & Alloys Inc. (Ugine) and Ugitech S.A. (Ugitech) for an interim review of the Order to exclude certain specific products exported by Ugitech from France and not produced in Canada, namely certain stainless steel round bar made using the UGIMA® process (Interim Review No. RD-2004-007). On November 24, 2004, the Tribunal decided that this request was also properly documented.

4. Section 76.01 of the *Special Import Measures Act*¹ gives the Tribunal jurisdiction to conduct an interim review if it is satisfied that a review is warranted. Based on the submissions received, the Tribunal decided, on December 8, 2004, that an interim review of both the Finding and the Order was warranted and issued a notice of commencement of interim review.

5. Rule 6.1 of the *Canadian International Trade Tribunal Rules*² permits the Tribunal to combine, on its own initiative, multiple proceedings to provide for a more expeditious or informal process where circumstances and considerations of fairness permit. Having regard to the fact that each request for an

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

2. S.O.R./91-499.

interim review deals with the same domestic industry, rests on the same ground (i.e. the lack of domestic production) and was received within weeks of the others, and having regard to its desire to optimize its access to the best evidence available and reduce unnecessary administrative duplication and potential confusion for the participants, the Tribunal decided to combine the five requests for an interim review and to proceed with a single interim review.

6. In accordance with paragraph 25(c) of the *Canadian International Trade Tribunal Rules*, the Tribunal decided to proceed with a hearing by way of written submissions.

7. On December 8, 2004, the Tribunal requested that, by December 22, 2004, Atlas provide specific information to the Tribunal, such as a description of its current corporate structure, and an explanation as to when and why production had ceased and what its intentions were for restarting production. Atlas did not reply to this request. Despite the best efforts of the Tribunal to involve Atlas, the only direct response received from Atlas was the e-mail of November 17, 2004, in which it indicated that it would not “play a role in this review”. The Tribunal understands that Atlas is now owned by Ezee Management Inc., but this company also did not take the opportunity to participate in these proceedings.

8. In order to ensure that it had the best information available, on December 30, 2004, the Tribunal decided to place submissions received in Expiry No. LE-2004-008, concerning the expiry of the Finding, on the record of this interim review. Submissions from the expiry proceeding had been received from Unalloy-IWRC (Unalloy), which opposed the expiry of the Finding, and from Jyoti Steel Industries and the Engineering Export Promotion Council of India, which supported the expiry of the Finding. Copies of these submissions were sent to Atlas and to the persons requesting an interim review. By January 12, 2005, the Tribunal had received comments on the submissions from Sumitomo, Ugine and Ugitech, and Corus.

REASONS FOR DECISION

9. The purpose of an interim review is to determine whether the circumstances require a finding or order to be rescinded, continued with amendment, or continued without amendment.³ This is consistent with Article 11 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* and Article 21 of the WTO *Agreement on Subsidies and Countervailing Measures*. These articles provide that a duty “shall remain in force only as long as and to the extent necessary” to counteract dumping or subsidization which is causing injury.⁴ For the continuation of a finding or an order to be necessary, it must be determined that the injury to the domestic industry would be likely to continue or recur if the duties were removed or varied.⁵

10. It is clear from the evidence that Atlas has not produced stainless steel round bar in Canada since at least the beginning of 2004. Evidence from Corus indicating that the mill was shut down 15 months ago was not disputed. The evidence also suggests that no other company has started to produce stainless steel round bar in Canada or has plans to do so.

11. The evidence from third parties does indicate that efforts are under way to resume production at the Atlas mill. Unalloy, which identified itself as “the mill support centre” for Atlas, submitted information forwarded to it from Atlas indicating that Atlas’s new owner is aiming to resume production in July 2005. Unalloy argued that this effort would end or be seriously impaired if the Finding and Order were rescinded

3. Subsection 76.01(5) of *SIMA*.

4. Articles 11.1 and 21.1 of the respective agreements.

5. Articles 11.2 and 21.2 of the respective agreements.

because dumping would very quickly recur. Unalloy referred to past and present trade measures in Canada and the United States as evidence that certain countries covered by the Finding and the Order as well as others have a propensity to dump stainless steel round bar. The Tribunal notes that Unalloy did not address the issue of subsidization, nor did it provide any information to rebut the specific product exclusion requests made by Sumitomo and Ugine and Ugitech, or the country exclusion request made by Corus.

12. This is not the first interim review where there has been no domestic production. In *Wooden Clothespins*,⁶ the domestic industry had ceased production. In the event, the Canadian Import Tribunal rescinded the finding, and gave the following reasons:

... the Tribunal must not lose sight of its mandate: that a finding of material injury is put in place to protect the production in Canada of like goods. In the case of clothespins, not only has there been a complete lack of production over the past fifteen months, but it appears that any new Canadian production of wooden clothespins will not occur for at least a further six to eight months, barring any unforeseen production problems, and with full market presence perhaps not a reality for an additional year. Moreover, there is the uncertainty of a new venture, with unproven machinery.

The Tribunal is not persuaded that it should maintain the findings of material injury against imports of wooden clothespins under these circumstances. Any established producer will have proper recourse to seek remedial action in the future should dumping resume. ...

Given the significant changes in the marketplace since the last Tribunal finding, particularly the absence of Canadian production since mid-1985, as well as the uncertainty as to when Canadian production will resume, the Tribunal hereby rescinds the said findings.

13. The time frame for the resumption of domestic production of stainless steel round bar is even more uncertain than it was for wooden clothespins. Although the new owner of the Atlas mill is apparently targeting July 2005 for the first melt, the evidence available to the Tribunal casts doubt on the feasibility of meeting this deadline. Unalloy's own evidence reveals that negotiations with the unions and suppliers are still incomplete. In addition, Corus produced evidence that the regional municipality has denied requests to write off arrears for property taxes and water bills totalling \$5.4 million. Furthermore, the same evidence implies that the restart of the mill has already been delayed several months, and the president of the union local fears that the mill will not restart at all. The Tribunal sees no firm evidence of investment to support the restart.

14. In sum, the Tribunal finds that there have been very significant changes in the Canadian market for stainless steel round bar since the time of the Finding and the Order. In particular, there has been no domestic production for well over a year and it is uncertain when domestic production will resume. The Tribunal is not convinced that it will be within the next six months.

15. In these circumstances, with no domestic production in the near future, the Tribunal finds that it is unlikely that injury will continue or recur if the duties are removed and, therefore, that the Finding and the Order are no longer necessary.

16. If and when domestic production resumes, the domestic industry will have recourse to seek remedial action should it believe that injurious dumping or subsidization has recurred or is likely to recur.

17. For the foregoing reasons, pursuant to paragraph 76.01(5)(a) of *SIMA*, the Tribunal hereby rescinds the finding made on October 27, 2000.

6. (14 November 1986), R-4-86 (Canadian Import Tribunal).

18. Pursuant to paragraph 76.01(5)(a) of *SIMA*, the Tribunal hereby rescinds the order made on September 3, 2003.

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