Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2016-003

Certain Fabricated Industrial Steel Components

Determination issued
Thursday, November 10, 2016

Reasons issued
Friday, November 25, 2016

Canada

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

CERTAIN FABRICATED INDUSTRIAL STEEL COMPONENTS

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 alleged injurious dumping of fabricated structural steel and plate-work components of buildings, process equipment, process enclosures, access structures, process structures, and structures for conveyancing and material handling, including steel beams, columns, braces, frames, railings, stairs, trusses, conveyor belt frame structures and galleries, bents, bins, chutes, hoppers, ductwork, process tanks, pipe racks and apron feeders, whether assembled or partially assembled into modules, or unassembled, for use in structures for: 1. oil and gas extraction, conveyance and processing; 2. mining extraction, conveyance, storage, and processing; 3. industrial power generation facilities; 4. petrochemical plants; 5. cement plants; 6. fertilizer plants; and 7. industrial metal smelters; but excluding electrical transmission towers; rolled steel products not further worked; steel beams not further worked; oil pump jacks; solar, wind and tidal power generation structures; power generation facilities with a rated capacity below 100 megawatts; goods classified as "prefabricated buildings" under HS Code 9406.00.90.30; structural steel for use in manufacturing facilities used in applications other than those described above; and products covered by Certain Fasteners (RR-2014-001), Structural Tubing (RR-2013-001), Carbon Steel Plate (III) (RR-2012-001), Carbon Steel Plate (VII) (NQ-2013-005), and Steel Grating (NQ-2010-002); originating in or exported from the People's Republic of China, the Republic of Korea, the Kingdom of Spain, the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland, and the alleged injurious subsidizing of the above-mentioned goods 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 follows the notification, on September 12, 2016, 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 the evidence discloses a reasonable indication that the alleged injurious dumping or subsidizing of the above-mentioned goods have caused or are threatening to cause injury to the domestic industry.

Jean Bédard
Jean Bédard
Presiding Member

Rose Ritcey
Rose Ritcey
Member

Serge Fréchette
Serge Fréchette
Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

VIEWS OF MEMBERS BÉDARD (PRESIDING) AND FRÉCHETTE

BACKGROUND

1. The Canadian International Trade Tribunal (the Tribunal) commenced this preliminary injury inquiry on September 13, 2016, concerning the alleged injurious dumping of certain fabricated industrial steel components (FISC) (the subject goods) originating in or exported from the People's Republic of China (China), the Republic of Korea (Korea), the Kingdom of Spain (Spain), the United Arab Emirates (UAE) and the United Kingdom of Great Britain and Northern Ireland (the United Kingdom) and the alleged injurious subsidizing of certain FISC from China.

2. This preliminary injury inquiry stems from a complaint filed by Supermetal Structures Inc., Supreme Group LP and Waiward Steel LP (the complainants) and the initiation of dumping and subsidizing investigations on September 12, 2016, by the President of the Canada Border Services Agency (CBSA).

3. With regard to the period from January 1, 2014, to June 30, 2016, the CBSA estimates that the overall margins of dumping are 21.4 percent for China, 48.1 percent for the UAE, 57.7 percent for the United Kingdom, 90.3 percent for Spain and 95.8 percent for Korea, expressed as a percentage of the export price of the subject goods.[1] Further, the CBSA opined that the estimated amount of subsidy was not insignificant and that the estimated volumes of the subject goods were not negligible.[2]

4. Prior to rendering its preliminary determination in this matter, the Tribunal conducted a site visit at the Supreme Group LP and Waiward Steel LP facilities in Edmonton, Alberta, and in the course of those visits, it observed the production of FISC. The Tribunal also received written submissions from the complainants and parties opposed to the complaint, namely, Lafarge Canada Inc. (Lafarge), China Chamber of International Commerce, the Delegation of the European Union to Canada and Yanda Canada Ltd.

5. The complainants are fabricators of structural steel components used in large industrial projects. These include the kinds of FISC which are set out in the product definition.

6. The complainants submitted that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry. In support of their allegations, the complainants provided evidence of increased volumes of imports of the subject goods, loss of market share, loss of sales volumes, price undercutting, price suppression, price depression, lost revenues, reduced gross margins, reduced profitability, underutilization of production capacity and loss of employment.

7. The complainants also submitted that the dumping and subsidizing of the subject goods are threatening to cause injury to the domestic industry. They alleged that the likelihood that a significant increase in the dumped and subsidized imports, and the corresponding reduction of domestic market share, will continue. Further, they argued that the prices of the subject goods are likely to continue to undercut, depress and suppress domestic prices.

8. The parties opposed to the complaint submitted that the evidence does not disclose a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to

1. Exhibit PI-2016-003-05, Vol. 1D at 188.
2. *Ibid.* at 194.

cause injury to the domestic industry. There were arguments about the scope and composition of the subject goods and the corresponding scope and composition of the domestic industry. They disputed that the complainants represent a major proportion of the domestic industry. Several parties also submitted that any injury that the complainants may have experienced is attributable to factors other than the dumping or subsidizing.

LEGISLATIVE FRAMEWORK

Reasonable Indication

9. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of the *Special Import Measures Act*,[3] which requires 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. The term "reasonable indication" is not defined in *SIMA*, but is understood to mean that the evidence need not be ". . . conclusive, or probative on a balance of probabilities . . . ."[4]

11. The Tribunal has previously been satisfied that the threshold for the "reasonable indication" standard was met where[5]

- the alleged injury or threat of injury is substantiated by evidence that is sufficient in the sense that it is "relevant, accurate and adequate"; and,
- in light of the evidence, the allegations stand up to a "somewhat probing examination", even if the theory of the case might not seem convincing or compelling.

12. The Tribunal is aware that, by expressing the standard in the above manner in recent years, there has been a perception that the Tribunal has raised the bar for meeting the standard. The Tribunal can neither raise nor lower the bar. The bar has been set by Parliament. It is a low bar. The Tribunal has always maintained that the reasonable indication standard is lower than the standard that applies in a final injury inquiry under section 42 of *SIMA*.[6]

13. The Tribunal expects that the evidence in a preliminary injury inquiry will be significantly less detailed and comprehensive than the evidence in a final injury inquiry. Not all the evidence is available at the preliminary phase, and there is no oral hearing to fully probe what is available. Accordingly, the evidence will not be tested to the same extent as it would be during a final injury inquiry. The Tribunal will give the complainants the benefit of the doubt.

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3. R.S.C., 1985, c. S-15 [*SIMA*].
4. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).
5. *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) at para. 16; *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) [*Reinforcing Bar*] at para. 15; *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) at para. 16; *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) at para. 24; *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.
6. *Certain Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 7.

14. Complaints will be read generously; however, the outcome of a preliminary injury inquiry must not be taken for granted.[7] Simple assertions are not sufficient.[8] Complaints, as well as the cases of parties opposed, must be supported by positive evidence that is sufficient and relevant, in that it addresses the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.[9]

Injury and Threat of Injury Factors

15. In making its preliminary determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Regulations*, including the import volumes of the dumped and subsidized goods, the effect of the dumped and subsidized goods on the price of like goods, the resulting economic impact of the dumped and subsidized goods on the domestic industry and, if injury or threat of injury[10] is found to exist, whether a causal relationship exists between the dumping of the goods and the injury or threat of injury.

16. In this regard, "domestic industry" is defined in subsection 2(1) of *SIMA* by reference to the domestic production of "like goods". Accordingly, the Tribunal must first determine what constitutes "like goods" in relation to the subject goods. Once that determination has been made, the Tribunal must determine what constitutes the "domestic industry" for purposes of its injury analysis.

17. Given that the CBSA has determined that the subject goods originating or exported from China have been dumped and subsidized, the Tribunal, in considering the issue of injury, must also determine whether it would be appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether to cross-cumulate the effects of dumping and subsidizing) in this inquiry.

PRELIMINARY ISSUES

18. Before examining the allegations of injury and threat of injury, the Tribunal must identify the like goods and the domestic industry that produces the like goods. The analysis of these preliminary issues is required because subsection 2(1) of *SIMA* defines "injury" as ". . . material injury to a domestic industry" and "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 . . . ."

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7. *Reinforcing Bar* at paras. 18-19.
8. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the *Anti-dumping Agreement*) and Article 11 of the WTO *Agreement on Subsidies and Countervailing Measures* (the *SCM Agreement*) require an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping and subsidizing complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping and subsidizing or injury. Article 5 of the *Anti-dumping Agreement* and Article 11 of the *SCM Agreement* also specify that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the articles.
9. S.O.R./84-927 [*Regulations*].
10. In its consideration of whether there is a reasonable indication that the dumping of the subject goods are threatening to cause injury, the Tribunal is guided by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.

Subject Goods, Like goods and Classes of Goods

19. The definition of the subject goods is complex. It is comprised of a lengthy list of components, which are in turn made up of an illustrative list of steel products, and includes only fabricated steel components which have the seven enumerated end uses. Accordingly, a preliminary issue was raised regarding the scope of the like goods, which the Tribunal had to consider before it could determine the composition of the domestic industry. Specifically, it was argued that the like goods included fabricated steel components for end uses not enumerated in the product definition, e.g. for use in residential and commercial buildings.

20. The complainants take the position that the like goods are domestically produced FISC of the same definition as the subject goods and that these goods constitute a single class of goods. Others argued that the scope of the like goods was broader and included domestically produced FISC with end uses in addition to those described in the definition of the subject goods. Lafarge also argued that there were two classes of goods (i.e. those for use in buildings and those for use in process equipment and other equipment) or six classes of goods (according to distinct end uses).

21. The Tribunal's established view, having regard to jurisprudence of the WTO, is that the scope of the like goods must be co-extensive with the scope of the subject goods, in that the like goods must capture the subject goods or a subset of same.[11] Selecting a scope of like goods which would be broader than that of the subject goods is not endorsed by the relevant WTO jurisprudence. The Tribunal will therefore conduct its analysis on the basis that domestically produced FISC, limited to the end uses listed in the product definition, are like goods in relation to the subject goods.

22. The Tribunal will continue to gather evidence as to which goods produced and sold in Canada are like goods, on the basis of the above principles. As set out below, the Tribunal will also continue to investigate what constitutes the domestic industry that produces these like goods.

23. When determining whether there are multiple classes of goods, the Tribunal considers the physical and market characteristics of the goods in relation to one another. In the present case, the Tribunal finds that there is significant overlap in the physical nature of the steel components used to construct all the proposed categories of FISC. Irrespective of the category of end use for which they are produced, they have the same or similar specifications, method of manufacture, appearance and composition, among other attributes. In terms of market characteristics, the balance of the evidence indicates that, although there are different end uses, there is overlap in pricing and distribution channels. Accordingly, the Tribunal's analysis of the allegations of injury and threat of injury is premised on a single class of like goods and a single domestic industry.

Domestic Industry

24. *SIMA* 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.

25. The complaint identities 16 domestic producers of like goods, including the complainants and four supporting producers.

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11. *Unitized Wall Modules* (November 12, 2013), NQ-2013-002 (CITT) at para. 34.

26. Lafarge has identified other potential producers.[12] However, these companies appear to be smaller in size, and it is uncertain to what extent they produce FISC that falls within the scope of the like goods. That is something that the Tribunal intends to explore during the final injury inquiry.

27. The most concrete evidence on this topic is a statement[13] by Mr. Edward Whalen, President and CEO of the Canadian Institute of Steel Construction. The Tribunal has reason to believe that, by virtue of his position, Mr. Whalen has detailed knowledge of the composition of the domestic industry. In his estimation, the complainants and the supporting producers account for 80 percent of the total domestic production of the like goods.

28. Therefore, for the purposes of this preliminary injury inquiry, the Tribunal is satisfied that it has information regarding a major proportion of the total domestic production of the like goods and finds accordingly.

Cumulation and Cross-cumulation

29. Where there is dumping or subsidizing of goods from multiple countries in a preliminary injury inquiry, the Tribunal has consistently assessed their impact on the domestic industry cumulatively with the stated reasons that the available evidence appeared to justify such cumulation.[14] The Tribunal consistently considered evidence as to the factors set out in subsection 42(3), i.e. whether the import volumes from each country are negligible, whether the margins of dumping or amounts of subsidy for each country are insignificant and the conditions of competition between the goods from each country and between them and the like goods. It has done so even though there is no equivalent to subsection 42(3) of *SIMA* in a preliminary injury inquiry. In these past inquiries, the Tribunal was simply not presented with a situation where there was uncontroverted preliminary evidence as to negligibility of import volumes.

30. It is important that the Tribunal's decision be supported by the facts and reflect the context surrounding each case. The negligible import volume from one country may, in certain circumstances, justify extra scrutiny in determining whether there is a reasonable indication of injury or threat of injury with regard to that country. This extra scrutiny may be accomplished by doing such determination on a decumulated basis. In the present case, there is a stark preliminary question as to negligibility, apart from the subject goods from China and Korea. This is one of those exceptional circumstances where extra scrutiny is warranted.[15] Thus, the Tribunal must deal with the result that such evidence may justify decumulation, just as it had, in the past, used evidence that volumes were not negligible to justify cumulation.

31. *SIMA* defines "negligible" as less than 3 percent of total import volumes. The complainants' own evidence of the UAE's import volumes indicates that they were between 0 percent and 1 percent in 2013, 2014 and 2015, and 1 percent from 2013 to the first quarter of 2016. A careful review of the CBSA's import value estimates also suggests that the import volumes from the UAE are negligible. Therefore, on the basis of the specific facts of this case and for the reasons set out above, the Tribunal finds that cumulating the UAE goods with the other subject goods would not be appropriate in the circumstances.

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12. Exhibit PI-2016-003-07.02 (protected) at para. 83, Vol. 4.
13. Exhibit PI-2016-003-08.01D at para. 6, Vol. 3B.
14. *Oil Country Tubular Goods* (19 September 2014), PI-2014-002 (CITT) at para. 62; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) [*Copper Tube*] at para. 44; *Hot-rolled Carbon Steel Plate* (4 November 2013), PI-2013-003 (CITT) at para. 35.
15. None of the margins of dumping or amounts of subsidy are insignificant.

32. The Delegation of the European Union to Canada argues that the import volumes of the subject goods from Spain and the United Kingdom are also negligible. The Tribunal disagrees. The data in the complaint indicate that the import volumes of the subject goods from Spain and the United Kingdom were negligible in 2015 and the first quarter of 2016 but not in 2013 and 2014, especially in the case of the United Kingdom. The CBSA's own import value estimates paint a similar picture. Overall, the data in the complaint indicate that the volumes of the subject goods from Spain accounted for 5 percent of total import volumes from 2013 to the first quarter of 2016 and that the imports from the United Kingdom accounted for 13 percent of total import volumes during the same period.

33. Having regard to such factors as channels of distribution, availability in the same geographic regions of the domestic market, quality, pricing and so on, the preponderance of the evidence indicates that FISC from China, Korea, Spain and the United Kingdom have overlapping conditions of competition with each other or between them and the like goods. For example, there is evidence that domestic producers have competed with the subject goods from China, Korea, Spain and the United Kingdom for the same projects.

34. Therefore, the Tribunal considers it appropriate to cumulatively assess the impact of the dumping and subsidizing of the subject good from China, and the dumping of the subject goods from Korea, Spain and the United Kingdom but not those from the UAE.

35. The Tribunal notes that no further arguments regarding cumulation were raised. For example, parties did not address the fact that imports from China are both dumped and subsidized whereas those from the other countries are dumped. The Tribunal does expect parties to address these issues and the issue of cross-cumulation in the final injury inquiry.

INJURY ANALYSIS FOR THE CUMULATED COUNTRIES

Import Volume of Dumped and Subsidized Goods

36. The complainants submitted that their estimates show that the volume of imports of the subject goods from the cumulated countries has been significant and increasing since 2013, both in absolute terms and relative to the production and consumption of like goods in the regional market.

37. The data cited in the complaint show that these import volumes reached a peak of approximately 54,000 metric tons in 2015, more than double the volumes in the preceding year.[16]

38. Since domestic production during the period of inquiry was essentially stable,[17] the increasing volumes of the subject goods from the cumulated countries were also increasing relative to that production.

39. On the basis of the above, the Tribunal finds that the evidence discloses a reasonable indication that there has been a significant increase in the absolute or relative volume of imports of the subject goods from the cumulated countries.

Effect on Price of Like Goods

40. The complainants submitted that, as the result of the dumping of the subject goods which undercut the prices of the like goods, the domestic industry has suffered price depression and price suppression.

16. Exhibit PI-2016-003-02.01, Vol. 1 at 34.
17. *Ibid.* at 36.

41. In response to the above allegations, parties opposed asserted that the complainants have not provided appropriate, accurate or complete evidence in order for the Tribunal to be able to assess the price impact of the subject goods on the like goods.

42. The Tribunal is not convinced that average pricing data contained in the complaint are useful. No two FISC bids appear to be identical in terms of product offering, and there is potentially a large amount of product mix within such a bid.

43. However, the complainants have reported price undercutting on multiple specific projects where the subject goods from the cumulated countries were priced from 15 percent to 30 percent below the domestic price.[18] These would generally have been apples-to-apples comparisons in terms of product offerings by the various bidders. The complainants also provided a list of specific project-related injury allegations showing sales of the subject goods from the cumulated countries at dumped or subsidized prices.[19]

44. The complainants did not bid on all the specific projects cited in the complaint, and their knowledge of the volumes and prices connected with these projects is not as direct as where the complainants were bidders. While such evidence would clearly need to be fully examined and tested in the context of a final injury inquiry, particularly to establish whether the failure of domestic producers to bid on these projects was caused by the dumping or subsidizing of the subject goods or due to other reasons, the Tribunal accepts it for the purposes of the preliminary injury inquiry as an indicator of injury.

45. With respect to the allegation of price suppression, confidential financial information for the production of like goods submitted by the complainants supports these allegations.[20]

46. Overall, the Tribunal finds that the evidence discloses a reasonable indication that the dumping or subsidizing of the subject goods from the cumulated countries resulted in price undercutting, price depression and price suppression.

Resultant Impact on the Domestic Industry

47. As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal considers the impact of the dumped and subsidized subject goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.

48. In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumped and subsidized subject goods and the injury on the basis of the resultant impact of the volume and price effects of the dumped and subsidized goods on the domestic industry. The standard is whether there is a reasonable indication that the dumping or subsidizing of the subject goods has, *in and of itself*, caused injury.[21] The Tribunal must further consider, pursuant to paragraph 37.1(3)(b) of the *Regulations*, whether the reasonable indication of injury is attributable to factors other than the dumped and subsidized subject goods.

49. The complainants submitted that the domestic industry has experienced significant injury caused by imports of the subject goods over the period from 2013 to 2015, in the form of reduced sales, market share,

18. *Ibid.* at 132-51.
19. Exhibit PI-2016-003-09.01 (protected), Attachment 4, Vol. 4B.
20. Exhibit PI-2016-003-03.01 (protected), Attachment 8, Vol. 2.
21. *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at paras. 40, 43; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75; *Copper Tube* at para. 82; *Reinforcing Bar* at para. 95.

gross margins, net profits, capacity utilization rates and employment. In addition, the complainants provided information on account-specific sales lost to imports of the subject goods from the cumulated countries.

50. Production of the complainants and supporting producers destined for domestic sales did not decrease in absolute terms from 2013 to 2015.[22] When taking into account the production of other domestic producers, estimated domestic production reached a high point in 2015.

51. However, the evidence on the record also shows that the domestic industry's market share decreased by about 4 percent from 2013 to 2015, while the market share of the subject goods from the cumulated countries increased by that same amount over the same period.[23]

52. The CBSA's values-based estimates of market shares also preliminarily support the proposition that the subject goods from the cumulated countries are obtaining market share at the expense of domestic production. While the relative value of domestic sales declined in 2015, market share data show that the market share of the subject goods from the cumulated countries, in terms of value, continued to increase from approximately 13 percent of the market in 2013 to over 32 percent in 2015.

53. This combined data show a reasonable indication that the subject goods from the cumulated countries gained market share at the expense of the like goods.

54. The financial data of the complainants reasonably indicate that, from 2013 to 2015, the domestic industry experienced continued reduction of net sales, gross margins and net profits.[24] The data show low capacity utilization rates by the complainants.[25]

55. Also, as stated above, the complainants provided a number of examples of specific instances where they allegedly lost sales or accounts to imports of the subject goods from the cumulated countries or had to lower prices in order to maintain sales or accounts in competition with the lower-priced subject goods from the cumulated countries.

56. On balance, the evidence discloses a reasonable indication that the dumping or subsidizing of the subject goods from the cumulated countries has caused injury to the domestic industry.

57. The Tribunal recognizes that the other factors raised by the parties opposed[26] may in fact have had an impact on the domestic industry and, as such, are worthy of further probing and analysis in a final injury inquiry. For the purposes of this preliminary injury inquiry, there is insufficient evidence regarding their impact to negate the Tribunal's conclusion that, on balance, the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury.

58. As there is a reasonable indication that the subject goods have caused injury, the Tribunal will exercise judicial economy and not consider whether there is a reasonable indication that the dumping or subsidizing of the subject goods from the cumulated countries is threatening to cause injury.

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22. Exhibit PI-2016-003-02.01, Vol. 1 at 36.
23. *Ibid.*
24. *Ibid.* at 154.
25. *Ibid.* at 153.
26. The other factors include decreased demand caused by the collapse in oil prices, increased input costs, etc. Exhibit PI-2016-003-06.01 at 4, Vol. 3.

INJURY ANALYSIS FOR IMPORTS FROM THE UAE

59. In a final injury inquiry under section 42 of *SIMA*, the Tribunal is obliged to terminate its inquiry in respect of dumped or subsidized goods whose import volumes are negligible.[27] The Tribunal has no such authority during a preliminary injury inquiry. Therefore, although the evidence at this stage suggests that the import volumes of the dumped goods from the UAE are negligible, the Tribunal cannot terminate its inquiry in respect of those goods on the basis of negligibility alone.

60. As explained below, the evidence at this stage does not disclose a reasonable indication that the dumping of the subject goods from the UAE has caused injury to the domestic industry.

61. The only project which involved the subject goods imported from the UAE was the construction of Canadian Natural Resources Ltd.'s Unit 45 Combined Hydrotreating Unit, a project that required an estimated 2,500 metric tons of FISC at a constructed price of $9.25 million.[28] The complainants did not bid on the supply of the FISC but were selected to erect the structures.[29]

62. In the absence of further details on the circumstances of this supply, such as reliable estimates of price of the supply, there is insufficient evidence of significant price undercutting. Further, there is little or no evidence that the dumping of the subject goods from the UAE has caused price depression or price suppression to any significant extent.

63. However, the evidence does reasonably indicate that the dumping of the subject goods from the UAE is threatening to cause injury.

64. This threat of injury is partly due to the vulnerability of the domestic industry caused by the export orientation of the producers of the subject goods in the cumulated countries and their corresponding demonstrated ability to sustain and accelerate the increase in imports of those goods into Canada.

65. Accordingly, it is likely that the significant increase in imports of the subject goods from the cumulated countries into Canada, and the corresponding negative impact on the domestic industry's performance, is going to continue. This makes the domestic industry susceptible to injury from dumped goods from the UAE.

66. In this context, the Tribunal notes the following specific evidence:

- The UAE oil and gas industry, like similar industries in other regions, has been affected by the downturn in oil prices, and several large FISC-containing projects within the country have been cancelled or put on hold.
- UAE producers of the subject goods are also likely to be affected by decreased consumption in their traditional export markets, such as Saudi Arabia and Kuwait.
- UAE producers of the subject goods with experience in the oil and gas sector will likely look to other oil and gas markets, such as Canada's oil sands sector.[30]

27. Subsection 42(4.1) of *SIMA*.
28. Exhibit PI-2016-003-02.01, Vol. 1 at 148-49. The complainants did not know the actual price of the supply. Exhibit PI-2016-003-02.01, Vol. 1 at 206-207.
29. Exhibit PI-2016-003-02.01, Vol. 1 at 149.
30. *Ibid.* at 176-77.

- The exporter-producer of the subject goods in the UAE is related to the exporter-producer of the subject goods in the United Kingdom, William Hare Limited.[31]

67. While the Tribunal is not necessarily convinced by the evidence of threat of injury in respect of the subject goods from the UAE, particularly in terms of the likelihood that any increase in import volumes would be significant, the evidence for the purposes of the preliminary injury inquiry is sufficient.

CONCLUSION

68. On the basis of the foregoing analysis, the Tribunal determines that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry.

Jean Bédard
Jean Bédard
Presiding Member

Serge Fréchette
Serge Fréchette
Member

31. *Ibid.* at 57-58.

SEPARATE VIEWS OF MEMBER RITCEY

69. I must respectfully disagree with my colleagues' decision to assess separately the effects of the dumping of the subject goods from the UAE.

70. This case is unique in that the Tribunal has never had to consider how it should conduct its preliminary assessment of injury when import volumes from one or more subject countries appear to be negligible. As explained above, when import volumes are found to be negligible during the Tribunal's final injury inquiry, the Tribunal must terminate proceedings in relation to those goods at that point.[32] There is no such requirement in a preliminary injury inquiry.

71. Rather, pursuant to section 35 of *SIMA*, it is the CBSA which must terminate an investigation at this stage of the proceedings if it is satisfied that the actual or potential volumes of dumped or subsidized goods are negligible.[33] In this case, the CBSA did not terminate its investigations with regard to either the UAE or the United Kingdom. Therefore, the CBSA must not yet be satisfied that imports from those countries are in fact negligible, even though, for certain periods of time, the volumes of imports from the UAE and the United Kingdom, as presented in both the complaint and CBSA's own data, are less than 3 percent of all imports.

72. It is the Tribunal's longstanding view that it is generally the CBSA which is best placed to determine import volumes at the preliminary injury stage of a case.[34] I do not find that the evidence in this case justifies a departure from this view, and I will therefore rely on the CBSA's assessment that the volumes of dumped imports from the UAE and the United Kingdom should not be treated as negligible, despite the fact that they are each less than 3 percent of total imports during the CBSA's period of investigation.

73. Since the definition of negligibility as it applies to decumulation in section 42 of *SIMA* need not be read into section 37.1, and there are no other reasons not to cumulate, at this phase of proceedings, I consider it appropriate to conduct a cumulative assessment of all the subject goods. As a cumulative assessment of the other subject goods discloses a reasonable indication of injury, as demonstrated by my colleagues, adding the additional volumes from the UAE logically has the same result. Therefore, in my opinion, the evidence discloses a reasonable indication that the dumping and subsidizing of all the subject goods, including those from the UAE, are causing injury.

74. Having found that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods are causing injury, I do not find it necessary to consider whether the evidence also discloses a reasonable indication of threat of injury.

Rose Ritcey
Rose Ritcey
Member

32. *Wood Venetian Blinds and Slats* (18 June 2004), NQ-2003-003 (CITT) at paras. 71-73.
33. *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at para. 2.
34. *Copper Tube* at para. 51.