Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2012-003R

Carbon Steel Welded Pipe

Finding and reasons issued
Friday, December 8, 2017

Canada

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IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting:

THE DUMPING OF CARBON STEEL WELDED PIPE ORIGINATING IN OR EXPORTED FROM CHINESE TAIPEI

FINDING

The Canadian International Trade Tribunal, pursuant to a request by the Minister of Finance under section 76.1 of the *Special Import Measures Act*, has conducted a review of its finding made on December 11, 2012, in Inquiry No. NQ-2012-003, in respect of the dumping of carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range from 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively—and excluding 1 mm thick carbon steel tubing (SPCC-1, 25.6 mm in outside diameter), double coated (first coated with acrylonitrile butadiene styrene, then with polyvinyl chloride), and non-galvanized, ASTM A53, Grade B, Schedule 80 pipe, with an inside diameter of 1 1/4 inches to 1 1/2 inches, in 22-ft. lengths, with the inside weld scarfed, originating in or exported from the Republic of Korea, and produced with AISI C1022M steel with a carbon content of 0.18 percent to 0.23 percent and a manganese content of 0.80 percent to 1.00 percent—originating in or exported from Chinese Taipei.

The Canadian International Trade Tribunal confirms that the dumping of the above-mentioned goods, excluding those exported by Chung Hung Steel Corporation and Shin Yang Steel Co. Ltd., has threatened to cause injury. Therefore, the Canadian International Trade Tribunal hereby continues its finding made in Inquiry No. NQ-2012-003, excluding for greater certainty the goods exported by Chung Hung Steel Corporation and Shin Yang Steel Co. Ltd.

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Presiding Member

Ann Penner
Ann Penner
Member

Jean Bédard
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STATEMENT OF REASONS

INTRODUCTION

1. These proceedings stem from the threat of injury finding made by the Canadian International Trade Tribunal (the Tribunal) on December 11, 2012, in Inquiry No. NQ-2012-003 (hereafter "the Inquiry"), that the dumping and/or subsidizing of certain carbon steel welded pipe (the subject goods) originating in or exported from various countries, including Chinese Taipei and the United Arab Emirates (the UAE), were threatening to cause injury to a domestic industry.

2. In 2015-2016, Chinese Taipei successfully challenged aspects of the finding before a panel of the World Trade Organization (WTO) in *Canada – Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu* (DS482).[1] Notably for the purposes of this review, the WTO panel determined that the finding, as it related to two Chinese Taipei exporters with *de minimis* margins of dumping, was inconsistent with the WTO *Anti-dumping Agreement*.

3. The WTO Dispute Settlement Body (DSB) adopted the panel report, and Canada informed the DSB that it intended to implement the DSB's recommendations and rulings in DS482 by March 25, 2018.

4. On July 21, 2017, the Minister of Finance asked the Tribunal to "review its threat of injury finding in respect of certain carbon steel welded pipe originating in or exported from Chinese Taipei having regard to the DSB recommendations and rulings in DS482."[2]

5. The Minister made a similar request to the Canada Border Services Agency (CBSA) and, as a result of its review, the CBSA terminated its dumping investigation in respect of the Chinese Taipei exporters with *de minimis* margins of dumping; namely, Chung Hung Steel Corporation and Shin Yang Steel Co. Ltd. Consequently, those exporters are no longer subject to the Tribunal's finding nor to this review. In advance of this step, Parliament amended the *Special Import Measures Act*[3] to enable the CBSA to terminate dumping investigations in respect of exporters with *de minimis* margins of dumping.

6. The Tribunal initiated this review on July 28, 2017, and on October 10, 2017, issued a revised investigation report with volumes and values of imports adjusted to reflect the CBSA's termination of its investigations in respect of the *de minimis* exporters from Chinese Taipei. The Tribunal invited interested parties to file submissions consisting of arguments strictly in relation to the threat of injury finding, having particular regard to the revised investigation report and to the specific paragraphs of the Tribunal's statement of reasons dated December 27, 2012, in which the rationale for the threat of injury finding was explained.

7. The Tribunal received submissions from various domestic producers who argued in support of the Tribunal continuing its threat of injury finding, and from Conares—a *de minimis* exporter from the UAE—in favour of its goods being excluded from the finding. No party has taken the position that the finding should be rescinded, and the Tribunal did not receive submissions from interested parties in Chinese Taipei.

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1. *Canada – Anti-dumping Measure on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu* (21 December 2016), WTO Doc. WT/DS482/R, Report of the Panel.
2. Exhibit NQ-2012-003R-01, Vol. 1.
3. R.S.C., 1985, c. S-15 [*SIMA*].

8. The Tribunal has disposed of the matter without an oral hearing, having regard to the written submissions, the revised investigation report, the statement of reasons for the finding dated December 27, 2012, and the DSB recommendations and rulings in DS482.

LEGAL FRAMEWORK

9. The Minister's request to the Tribunal for this review was made pursuant to paragraph 76.1(1)(b) of *SIMA*, which provides as follows:

> **76.1 (1)** Where at any time after the issuance, by the Dispute Settlement Body established pursuant to Article 2 of Annex 2 to the WTO Agreement, of a recommendation or ruling, the Minister of Finance considers it necessary to do so, having regard to the recommendation or ruling, the Minister of Finance may request that
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> **(b)** the Tribunal review any order or finding described in any of sections 3 to 6, or any portion of such an order or finding and, in making the review, the Tribunal may re-hear any matter before deciding it.

10. The responsibility of the Tribunal at the conclusion of the review is set out in subsections 76.1(2) to (4) of *SIMA*, which provide as follows:

> **(2)** On completion of a review under subsection (1), the President or the Tribunal, as the case may be, shall
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> **(a)** continue the decision, determination, re-determination, order or finding without amendment;
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> **(b)** continue the decision, determination, re-determination, order or finding with any amendments that the President or the Tribunal, as the case may be, considers necessary; or
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> **(c)** rescind the decision, determination, re-determination, order or finding and make any other decision, determination, re-determination, order or finding that the President or the Tribunal, as the case may be, considers necessary.
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> . . .
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> **(3)** If a decision, determination, re-determination, order or finding is continued under paragraph (2)(a) or (b) or made under paragraph (2)(c), the President or the Tribunal, as the case may be, shall give reasons for doing so and shall set out to what goods, including, if practicable, the name of the supplier and the country of export, the decision, determination, re-determination, order or finding applies.
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> . . .
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> **(4)** The President or the Tribunal, as the case may be, shall notify the Minister of Finance of any decision, determination, re-determination, order or finding continued under paragraph (2)(a) or (b) or made under paragraph (2)(c).

11. While the Minister's request refers only to the threat of injury finding in respect of Chinese Taipei, the Tribunal made its finding in the Inquiry on the basis of a cumulative assessment of the goods from Chinese Taipei with the goods from the other countries that were also subject to the inquiry, pursuant to subsection 42(3) of *SIMA*. Therefore, in this case, the Tribunal has reviewed the threat of injury finding in respect of Chinese Taipei (except the *de minimis* exporters) and the other subject countries cumulatively, and not in respect of Chinese Taipei separately.

12. In considering whether goods are threatening to cause injury, the Tribunal is guided by the factors prescribed in subsection 37.1(2) of the *Special Import Measures Regulations*.[4] Also of relevance is subsection 2(1.5) of *SIMA*, which indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping and subsidizing of the goods would cause injury are clearly foreseen and imminent. Further, subsection 37.1(3) of the *Regulations* directs the Tribunal to consider whether a causal relationship exists between the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2), and whether any factors other than the dumping or subsidizing of the goods are threatening to cause injury.

ANALYSIS

Timeframe of Analysis

13. In the Inquiry, the Tribunal determined that it was appropriate to focus on the 12 to 18 months from December 2012. Therefore, that is the timeframe used in this review.

Significant Rate of Increase in the Volume of Dumped and Subsidized Goods

14. In the Inquiry, the Tribunal found that there would be a considerable increase in the import volumes of the dumped and subsidized goods in the near future. This conclusion was based on the following:

(1) a threefold rate of increase in import volumes in absolute terms and also a large increase relative to the production and consumption of the domestically produced like goods, between 2009 and 2011;

(2) Canada being an attractive destination for the goods in the ensuing 12-18 months given ongoing weaknesses in the economies of the subject countries; and

(3) a likelihood that the subject countries would face increasing competition in their home markets from China.

The Tribunal also found that the subject countries had a production capacity that was approximately 45 times the size of the Canadian market, had a propensity to seek out export markets, and were limited in

4. S.O.R./84-927 [*Regulations*]. Subsection 37.1(2) of the *Regulations* reads as follows: "For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed: **(a)** the nature of the subsidy in question and the effects it is likely to have on trade; **(b)** whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; **(c)** whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; **(d)** the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; **(e)** whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; **(f)** inventories of the goods; **(g)** the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; **(g.1)** the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; **(g.2)** evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and **(h)** any other factors that are relevant in the circumstances."

their opportunities to export to other markets due to the imposition of anti-dumping or countervailing measures in the European Union and the United States.

15. The revised investigation report shows that the import volumes are virtually unchanged with the removal of the goods of the *de minimis* Chinese Taipei exporters. The import volumes for 2009 and 2010 did not change at all, and the import volumes for 2011 and H1 2012 are only fractionally smaller. The rate of increase in import volumes in absolute and relative terms between 2009 and 2011 remains very large.[5]

16. Removal of the *de minimis* Chinese Taipei exporters does not affect the Tribunal's findings of fact with respect to the attractiveness of the Canadian market and the likelihood of the subject countries facing increasing competition in their home markets.

17. Removal of the *de minimis* Chinese Taipei exporters from the equation does not materially change the fact that production capacity in the subject countries was approximately 45 times the size of the Canadian market. The capacity of the *de minimis* Chinese Taipei exporters accounts for just a small fraction of the total capacity in the subject countries.[6]

18. Removal of the *de minimis* Chinese Taipei exporters does not alter the fact that the subject countries had a propensity to export. This finding of fact was not based on evidence specific to those exporters.[7] Nor does it change the fact that the European Union and the United States have had anti-dumping or countervailing measures in place on similar or identical goods from the subject countries.

19. Therefore, the Tribunal remains of the view that there would have been a considerable increase in the import volumes of the dumped and subsidized goods.

Potential Impact of the Subject Goods on the Prices of the Like Goods

20. In the Inquiry, the Tribunal found that there would be significant adverse effects on the prices of domestically produced like goods in the ensuing 12-18 months. This conclusion was based on the following:

(1) the subject goods were the price leaders in the market;

(2) the subject goods would continue to be the price leaders;

(3) domestic producers were already facing pressure to provide their customers with competitive pricing;

(4) the subject goods benefitted from an existing distribution network in Canada; and

(5) importers were ready to continue to source from the subject countries.

21. The *de minimis* Chinese Taipei exporters were not themselves the price leaders. According to the original investigation report, the average unit value of imports from Chinese Taipei was higher than the values from at least one other subject country throughout the period of inquiry, although at times they were close.[8] The revised investigation report shows that, with the *de minimis* Chinese Taipei exporters removed,

5. Exhibit NQ-2012-003R-08 (protected), Tables 40, 43 and 48, Vol. 2.1.
6. Exhibit NQ-2012-003-07A, tab 13 at p. 40, Vol. 11B.
7. Exhibit NQ-2012-003-A-02 (protected) at 47, 58, 62-64, 67-68, 77-78, Vol. 12; Exhibit NQ-2012-003-A-07A, tab 13 at IV-11–IV-12, IV-14, IV-21, IV-23–IV-24, Vol. 11B; *Ibid.*, tab 33.
8. Exhibit NQ-2012-003-07D (protected), Table 45, Vol. 2.1A.

the average unit values of imports from Chinese Taipei are lower. The lowest average unit values in 2010 and 2011 were from other Chinese Taipei exporters or other subject countries.[9] Removal of the *de minimis* Chinese Taipei exporters from the equation does not therefore affect the Tribunal's conclusion that the subject goods were the price leaders and that this would continue.

22. Removal of the *de minimis* Chinese Taipei exporters from the equation also does not change the fact that domestic producers were already facing pressure to provide their customers with competitive pricing, that the subject goods benefitted from an existing distribution network in Canada, and that importers were ready to continue to source from the subject countries. None of the findings of fact were based to any meaningful extent on the activities of the *de minimis* Chinese Taipei exporters.

23. Therefore, the Tribunal remains of the view that there would have been significant adverse effects on the prices of domestically produced like goods.

Potential Impact of the Subject Goods on the Domestic Industry

24. In the Inquiry, the Tribunal found that the potential negative impact of the subject goods on the domestic industry was likely to be severe. This conclusion was based on the following:

(1) the subject goods have captured a disproportionate share of the increase in the Canadian market in 2011, almost entirely at the expense of domestic producers;

(2) the domestic industry's profitability was in decline;

(3) domestic producers had been responding to the presence of the subject goods by stretching their resources and relying on the production of other more profitable products;

(4) domestic producers had already reduced hours and wages; and

(5) access to capital was already reduced. The continued pressure from the subject goods would erode profit margins to an unsustainable point and jeopardize the viability of certain domestic producers.

25. The market share accounted for by the *de minimis* Chinese Taipei exporters in 2011 was very small.[10] Therefore, the finding of fact that the subject goods had captured a disproportionate market share in 2011 still stands.

26. The removal of the *de minimis* Chinese Taipei exporters from the analysis also does not affect the state of the domestic industry as found in the Inquiry, or the resultant financial impact that would have resulted from the significant rate of increase in import volumes and the significant adverse price effects from the subject goods.

27. Therefore, the Tribunal remains convinced that the impact of the subject goods on the domestic industry would have been severe.

Other Factors

28. In the Inquiry, the Tribunal found that, although imports from Turkey, a non-subject country, might continue to be a source of competition for the domestic industry, there was nonetheless a threat of injury

9. Exhibit NQ-2012-003R-08 (protected), Table 45, Vol. 2.1.
10. *Ibid.*, Table 50.

from the subject countries. The Tribunal also found that imports from the United States did not pose a risk to the domestic industry. These conclusions are unaffected by the termination of the dumping investigations in respect of the *de minimis* Chinese Taipei exporters.

29. Moreover, because the import volumes of the *de minimis* Chinese Taipei exporters were relatively very small and their prices were relatively high, there is no reason to believe that the presence of their goods in the domestic market in the ensuing 12-18 months would sever the causal link between the threat of injury and the dumping and subsidizing of the subject goods.

Conclusion

30. The Tribunal therefore determines that the dumping and subsidizing of the subject goods, excluding those goods exported by the *de minimis* Chinese Taipei exporters, were indeed threatening to cause material injury to the domestic industry.

EXCLUSION REQUEST

31. *SIMA* implicitly authorizes the Tribunal to exclude goods from the scope of a finding.[11] The Tribunal will not grant such exclusions unless it is convinced that the goods will not cause injury to the domestic industry.[12]

32. In the Inquiry, the Tribunal rejected a request by Conares to exclude its goods from the threat of injury finding, even though it removed the volume and prices of Conares' goods from its injury analysis on the basis that they were not dumped. The Tribunal found that such an exclusion would pose a serious and imminent threat of injury to the domestic industry. In this case, Conares asked the Tribunal to reconsider its exclusion request in light of DS482 even though the WTO panel only considered the *de minimis* exporters from Chinese Taipei. The domestic industry objected to Conares' request, arguing that it is outside the scope of the present review.

33. While the logic behind DS482 suggests that subjecting Conares to the finding would be contrary to the *Anti-dumping Agreement*, the Tribunal finds that it does not have the authority to grant Conares the relief it is seeking in this review. The CBSA did not terminate the dumping investigation with respect to Conares and, as a result, Conares remains subject to the original finding and the present review. As in the case of the CBSA, the Minister's request to the Tribunal was explicitly limited to the two *de minimis* exporters from Chinese Taipei only. The Minister did not ask the Tribunal to review the finding in respect of Conares. This is a clear indication of the limits of the authority conferred upon the Tribunal by the Minister under section 76.1 of *SIMA*.

34. Conares argues that the Tribunal has the authority under paragraph 76.1(2)(b) of *SIMA* to continue the finding with any amendments that it *considers necessary* despite the specific language of the Minister's request and therefore grant the exclusion that it seeks. The Tribunal disagrees. Pursuant to paragraph 76.1(2)(b), the Minister can ask the Tribunal to "review any order or finding . . . or any *portion* of

11. *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Aciéries v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Induction Motors Originating In or Exported From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-Rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.
12. See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 339; *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

such an order or finding" [emphasis added]. In this instance, the Minister asked the Tribunal to review a portion of its decision in the Inquiry. A contextual reading of paragraph 76.1(2)(b) suggests that the power granted to the Tribunal to amend the original finding is limited by the terms of the Minister's request. Doing otherwise, as suggested by Conares, would mean that the Tribunal can disregard the terms of the Minister's request when the Minister choses to ask the Tribunal to review only a portion of an original decision. This cannot be. Therefore, Conares' exclusion request is denied.

35. However, Conares will effectively receive the relief it is seeking. As explained in the Tribunal's statement of reasons for Expiry Proceeding No. LE-2017-003, the Tribunal will allow the finding to expire in relation to Conares from the date of the Tribunal's decision in this matter. Furthermore, the statement of reasons in the expiry proceeding will also discuss another potential avenue for exporters who are in a situation similar to Conares'.

36. Therefore, Conares' exclusion request is denied.

CONCLUSION

37. The Tribunal confirms that the dumping of the subject goods, excluding those exported by Chung Hung Steel Corporation and Shin Yang Steel Co. Ltd., has threatened to cause injury. Therefore, the Tribunal hereby continues its finding made in Inquiry No. NQ-2012-003, excluding for greater certainty the goods exported by Chung Hung Steel Corporation and Shin Yang Steel Co. Ltd.

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