



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2017-004

Dry Wheat Pasta

*Determination issued
Monday, February 26, 2018*

*Reasons issued
Tuesday, March 13, 2018*

TABLE OF CONTENTS

PRELIMINARY DETERMINATION	i
STATEMENT OF REASONS	1
INTRODUCTION	1
PRODUCT DEFINITION	1
LEGISLATIVE FRAMEWORK.....	1
FRAMEWORK ISSUES	3
LIKE GOODS AND CLASSES OF GOODS	3
DOMESTIC INDUSTRY	3
OVERVIEW OF THE CANADIAN MARKET	4
INJURY ANALYSIS	4
Import Volume of Subject Goods	4
Effect on Prices of Like Goods.....	5
Resultant Impact on the Domestic Industry	6
Causality and Materiality	8
THREAT OF INJURY ANALYSIS	9
Likely Price Effects.....	10
Likely Substantial Increase in Volumes of Subject Goods.....	11
Likely Impact.....	12
CONCLUSION	13

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

**DRY WHEAT PASTA ORIGINATING IN OR EXPORTED FROM THE
REPUBLIC OF TURKEY**

PRELIMINARY DETERMINATION

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 dumping and subsidizing of all dry wheat-based pasta, not stuffed or otherwise prepared, and not containing more than two percent eggs, whether or not enriched, fortified, organic, whole wheat or containing milk or other ingredients, originating in or exported from the Republic of Turkey, excluding refrigerated, frozen or canned pasta, have caused injury or retardation or are threatening to cause injury.

This preliminary injury inquiry follows the notification, on December 28, 2017, 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 there is evidence that discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused or are threatening to cause injury to the domestic industry.

Jean Bédard
Jean Bédard
Presiding Member

Ann Penner
Ann Penner
Member

Rose Ritcey
Rose Ritcey
Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

INTRODUCTION

1. On November 7, 2017, the Canadian Pasta Manufacturers Association (CPMA) filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping and subsidizing of dry wheat pasta originating in or exported from the Republic of Turkey (Turkey) (the subject goods) have caused injury or are threatening to cause injury to the domestic industry.¹

2. On December 28, 2017, the President of the CBSA initiated investigations respecting the dumping and subsidizing of the subject goods, pursuant to subsection 31(1) of *Special Import Measures Act*.² In its statement of reasons concerning the initiation of those investigations, the CBSA estimated that, for the period of October 1, 2016, to September 30, 2017, the subject goods were dumped by a margin of 26.5 percent, and that for the period of January 1, 2016, to September 30, 2017, they were subsidized by an amount of subsidy of 9.94 percent, both expressed as a percentage of the export price.³

3. On December 29, 2017, the Canadian International Trade Tribunal (the Tribunal) began its preliminary injury inquiry pursuant to subsection 37.1(1) of *SIMA*.

4. On February 26, 2018, the Tribunal determined that there was evidence disclosing a reasonable indication that the subject goods have caused injury or are threatening to cause injury to the domestic industry, for the reasons that follow.

PRODUCT DEFINITION

5. For the purposes of the CBSA's investigations and this preliminary injury inquiry, the subject goods are defined as follows:⁴

All dry wheat-based pasta, not stuffed or otherwise prepared, and not containing more than two percent eggs, whether or not enriched, fortified, organic, whole wheat or containing milk or other ingredients, originating in or exported from the Republic of Turkey, excluding refrigerated, frozen or canned pasta.

LEGISLATIVE FRAMEWORK

6. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*. It 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."⁵

1. As a domestic industry is already established, the Tribunal need not consider the question of retardation.

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

3. Exhibit PI-2017-004-05, Vol. 1E at 179, 182.

4. *Ibid.* at 168.

5. For injury inquiries under section 42 of *SIMA* that involve a single subject country, the Tribunal's practice is to make a cumulative assessment of the injurious effects of goods that are both dumped and subsidized (cross-cumulation). The Tribunal therefore considers that it would be inconsistent not to cross-cumulate the subject goods in a preliminary injury inquiry and has consequently assessed the cumulative effects of the dumping and subsidizing of the subject goods on the domestic industry.

7. The “reasonable indication” standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*.⁶ 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. . . .”⁷

8. The Tribunal has been satisfied that the threshold for the “reasonable indication” standard was met where:⁸

- 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.

9. While complaints will be read generously, the outcome of preliminary inquiries must not be taken for granted.⁹ Simple assertions are not sufficient.¹⁰ Complaints, as well as the cases of parties opposed, must present the most complete picture possible and be supported by positive evidence that is sufficient and relevant, in that they address the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.¹¹

10. Generally, the evidence at the preliminary phase of proceedings 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 typically 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. As a result, the Tribunal will give complainants the benefit of the doubt.

11. With this framework in mind, the Tribunal notes that the complaint filed by the CPMA was deficient in a number of important aspects. As will be discussed below, in some instances, the evidence was entirely lacking, and in others, it was minimal or incomplete. For example, the complaint lacked complete information about the production capacity, capacity utilization, investments, employment, wages, and hours worked of the three CPMA members as they relate to dry wheat pasta. In addition, the financial data for two of the three CPMA members was incomplete, and some of the financial data may have included irrelevant

6. *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 7.

7. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

8. *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) [*Gypsum Board*] 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.

9. *Reinforcing Bar* at paras. 18-19.

10. 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* [*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.

11. S.O.R./84-927 [*Regulations*].

or additional information. More complete and precise information of the type described above was reasonably available to the complainants and should have been included in the complaint.

12. Nonetheless, as will be demonstrated below, the Tribunal “probed” the available data in order to reach a conclusion about whether the complaint provided enough evidence to disclose a reasonable indication that the dumping or subsidizing of the subject goods has caused injury or is threatening to cause injury.

FRAMEWORK ISSUES

13. As a first step, the Tribunal must address a number of framework issues. Specifically, the Tribunal must first identify the domestically produced goods that are “like goods” in relation to the subject goods, whether there is more than one class of like goods, as well as the domestic industry that produces those like goods.

LIKE GOODS AND CLASSES OF GOODS

14. Subsection 2(1) of *SIMA* defines “like goods”, in relation to any other goods, as “(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.”

15. The Tribunal typically considers a number of factors in deciding the issues of like goods and classes of goods, 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).¹²

16. There is no dispute between the parties that the dry wheat pasta produced in Canada that is of the same description as the subject goods is “like goods” in relation to the subject goods. Further, parties do not dispute that there is a single class of goods.

17. As such, and on the basis of the evidence on the record in relation to the above factors, the Tribunal will conduct its analysis on this basis.¹³

DOMESTIC INDUSTRY

18. Subsection 2(1) of the *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”

19. The CPMA is made up of three domestic producers of dry wheat pasta: Italpasta Limited (Italpasta), Primo Foods Inc. (Primo) and Grisspasta Products Ltd. (Grisspasta). The CPMA submits that its three members, along with Catelli Foods Corporation (Catelli), are the four primary producers of dry wheat pasta in Canada.¹⁴

12. *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) [*Copper Pipe Fittings*] at para. 48.

13. Exhibit PI-2017-004-2.01, Vol. 1 at 34-35.

14. There may also be some other small producers in the domestic market. See Exhibit PI-2017-004-3.01 (protected), Vol. 2 at 16, where the CPMA estimates that any such producers would represent a very small percentage of total production in Canada.

20. The Tribunal accepts, on the basis of the evidence on the record, that the collective production of Italpasta, Primo and Grisspasta represents a major proportion of the total domestic production of the like goods and finds accordingly.¹⁵ The Tribunal will explore the role of Catelli and other smaller domestic producers in the context of its final injury inquiry.

OVERVIEW OF THE CANADIAN MARKET

21. The Tribunal developed a snapshot of the Canadian market on the basis of the evidence in the complaint. The complaint indicated that the Canadian dry wheat pasta market is divided into three main segments: retail, food service, and industrial. The retail segment includes wholesalers, distributors and retailers of dry wheat pasta, all of which sell to Canadian consumers. The food service segment comprises institutions, restaurants and restaurant chains. The industrial segment comprises manufacturers of processed food products. These market segments can be further divided into sub-segments. For example, in the retail segment of the market, dry wheat pasta may be marketed and sold under the label of a national brand (such as “Primo”, “Italpasta” or “Catelli”) or as a private-label brand which is specific to a retail chain (such as “President’s Choice”, “No Name” or “Great Value”).¹⁶

22. The complaint also indicated that dry wheat pasta is a commodity-type product and that sales are made in a highly competitive, price-sensitive environment. Price changes are quickly transmitted throughout the retail segment whereas the food service and industrial segments may not be impacted quite as quickly by low-priced offers because different pricing practices are used in these market segments. However, a substantial price decline in one segment of the market will spill over into the other segments.

23. In the final injury inquiry, the Tribunal expects that more detailed information will be provided about the Canadian market. That kind of contextual information is critical as the Tribunal seeks to appreciate the dynamics in the market when undertaking its more involved investigation into allegations of injury and threat thereof.

INJURY ANALYSIS

24. When making its preliminary determination of injury, 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 is found to exist, whether a causal relationship exists between the dumping and subsidizing of the goods and the injury or threat of injury.

Import Volume of Subject Goods

25. The CPMA used Statistics Canada data to estimate that the volume of subject goods increased by 225 percent in 2015 and 109 percent in 2016.¹⁷ Overall, from 2014 to 2016, the volume of subject goods

15. Exhibit PI-2017-004-3.01 (protected), Vol. 2 at 25, 75.

16. In addition, some producers will “co-package” with other brands, in which case the pasta producer will produce, brand and package pasta for other producers.

17. Exhibit PI-2017-004-2.01, Vol. 1 at 40, 125.

increased by 581 percent.¹⁸ The CPMA's estimates also show an 18 percent increase in the volume of subject imports when comparing Q1-Q3 2016 to Q1-Q3 2017.¹⁹

26. The CBSA's confidential import data show a similar trend in the volume of imports of subject goods, but indicate a smaller overall increase from 2014 to 2016 than that estimated by the CPMA.²⁰

27. The CBSA's data also demonstrate the rising import shares of the subject goods vis-à-vis total imports; subject goods increased from 2.2 percent of total imports in 2014 to 12 percent of total imports in 2016 and represented 11.1 percent of total imports in Q1-Q3 2017.²¹

28. The Tribunal finds that these estimates reasonably indicate a significant increase, in absolute terms, in the volume of subject goods.

29. Both the CPMA's estimates and the CBSA's data also show an upward overall trend in the volume of imports of subject goods relative to domestic production and consumption.²² As the CPMA did not include data on the volumes of domestic sales from domestic production in its complaint, the Tribunal calculated the ratio of imports of subject goods relative to domestic consumption using the CPMA's estimates of domestic production less export sales. The Tribunal finds this estimate to be a reasonable proxy for domestic sales in the domestic market given that the CPMA had to estimate the data for Catelli at this preliminary stage. These estimates show an upward trend in the volume of imports of subject goods relative to domestic consumption of like goods.²³

30. The Tribunal finds that there is a reasonable indication that the absolute and relative volume of imports of the subject goods increased significantly from 2014 to Q3 2017.

Effect on Prices of Like Goods

31. The CPMA submitted that the price of the subject goods has significantly undercut the price of like goods in the domestic market, depressing the price of like goods and causing domestic producers to lose sales, particularly in the retail private-label sub-segment of the market.

32. The CPMA estimated average domestic selling prices using total annual sales for Italtasta, Primo, and Grisspasta divided by the total annual production of these three producers. AGTD took issue with the way in which these selling prices were estimated, because they were based on gross sales revenue (instead of net) and included both domestic and export sales.

33. Although the CPMA did not specifically address the issue of *unit* value pricing in its reply submission, in a different context it explained that it used gross sales instead of net sales because information on discounts, rebates and trade spending were not available for Catelli.²⁴

18. *Ibid.*

19. *Ibid.*

20. Exhibit PI-2017-004-3.02 (protected), Vol. 2A at 151.

21. Exhibit PI-2017-004-05, Vol. 1E at 172.

22. Exhibit PI-2017-004-3.01 (protected), Vol. 2 at 75; Exhibit PI-2017-004-2.01, Vol. 1 at 40, 125; Exhibit PI-2017-004-3.02 (protected), Vol. 2A at 151.

23. Exhibit PI-2017-004-3.01 (protected), Vol. 2 at 171; Exhibit PI-2017-004-2.01, Vol. 1 at 185-87.

24. Exhibit PI-2017-004-8.01, Vol. 3 at para. 10.

34. For the purposes of this preliminary injury inquiry, the Tribunal finds the unit pricing data provided by the CPMA to be adequate. However, at the final injury inquiry stage the Tribunal will require substantially more detailed information that reflects the complex nature of pricing for this product in all market segments and, with respect to each retail segment, how pricing practices differ for branded as opposed to private-label pasta. The Tribunal will also inquire into whether and how price effects in one segment of the market spill over into other segments of the market.

35. The CPMA's estimates of average prices indicate a consistent trend of significant price undercutting from 2014 to Q3 2017.²⁵ The margin of price undercutting by subject imports increased from 2014 to 2016, and in Q1-Q3 2017 as compared to Q1-Q3 2016, and the margin was significant. The CPMA's estimates show that the subject goods also undercut the average price of non-subject imports in every period examined, making the subject goods the price leaders in the Canadian market.²⁶

36. The complaint included allegations of price depression from two domestic producers. One domestic producer alleged that it was forced to lower its prices as a result of competition from subject goods in order to maintain an important retail account. Another domestic producer alleged that its average selling price per pound fell between 2015 and 2016, and again in Q1-Q3 2017 as a result of low-priced subject imports. These allegations were supported by confidential statements of evidence.²⁷

37. Nonetheless, the Tribunal notes that there is no evidence of price depression when looking at the consolidated average prices in the complaint.²⁸ The Tribunal also notes that the value of the one producer's account-specific allegation in one sub-segment of the retail market is very small in relation to the total value of the domestic industry's sales and the value of the domestic market as a whole during the relevant period. For these reasons, the Tribunal is not satisfied that the complainants have established that there is a reasonable indication of significant price depression.

38. Furthermore, the CPMA provided no evidence of price suppression.

39. Overall, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods resulted in price undercutting but that there is insufficient evidence that the subject goods have caused price depression or price suppression to any significant extent.

Resultant Impact on the Domestic Industry

40. As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal must consider the impact of the dumped and subsidized 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.

41. The CPMA submitted that the domestic industry has experienced injury in the form of lost sales, lost revenue, reduced profitability and employment, the inability to capitalize on a recent investment, and an unprecedented two-week plant closure as a result of the subject goods.

25. Exhibit PI-2017-004-2.01, Vol. 1 at 126-127, 185-87; *ibid.* at 247-48; Exhibit PI-2017-004-3.01 (protected), Vol. 2 at 62-63, 75; *ibid.* at 129.

26. Exhibit PI-2017-004-2.01, Vol. 1 at 52, 185-87; Vol. 1C at 247-48; Exhibit PI-2017-004-3.01 (protected), Vol. 2 at 36.

27. *Ibid.* at 183, 188.

28. *Ibid.* at 63, 75; *ibid.* at 129.

42. AGTD submitted that the complaint does not meet the evidentiary threshold of a preliminary injury inquiry, in particular because of its reliance on incomplete data and, therefore, inaccurate assumptions with respect to the volume and value of sales of domestic production in the domestic market, market share and the financial performance of the CPMA's members.

43. In reply, the CPMA asserted that some estimates and assumptions were required as it did not have access to data from one of the four primary producers. The CPMA also submitted that it adopted a conservative approach to estimate these data.

44. As noted above, the Tribunal accepts that not all the evidence is available at this preliminary phase, particularly as the complainant represents a major proportion, but not all, of the domestic industry. The Tribunal is, thereby, satisfied that the complainant's estimates regarding the size of the Canadian market, including the use of gross sales to estimate value and using domestic production less exports as a proxy for domestic sales in the domestic market, were reasonable at this stage.

Domestic Production

45. With respect to domestic production, the complaint included consolidated data for Italtasta, Primo and Grisspasta along with estimates for Catelli and a few other small producers that may be in the market. The consolidated data show that domestic production decreased by three percent between 2014 and 2016 and by nine percent in Q1-Q3 2017 when compared to Q1-Q3 2016.²⁹ This downward trend in production, in combination with the increased volume and market share of the subject goods, and the more slowly declining share of non-subject imports, may suggest that the subject goods have had some negative impact on domestic production.

Market Share and Sales

46. The available evidence shows that, in terms of volume, the size of the domestic market for dry wheat pasta contracted slightly from 2014 to 2016 and was down in Q1-Q3 2017 as compared to that same period in 2016.³⁰

47. From 2014 to 2016 both the market share of the domestic industry and non-subject countries decreased while the market share of the subject goods increased by almost six percentage points.³¹ However, both the domestic industry and the subject goods improved their market share in Q1-Q3 2017 as compared to Q1-Q3 2016, while the share held by non-subject countries continued to decrease.³² This evidence may suggest that, in interim 2017, the subject goods have captured market share at the expense of non-subject imports as opposed to domestically produced like goods.

48. In terms of sales, the domestic industry's consolidated sales decreased slightly in each full year examined and in Q1-Q3 2017 as compared to Q1-Q3 2016.³³ As noted above, one domestic producer alleged that it lost a substantial account to an important retailer in the private-label sub-segment of the market as a result of subject goods.³⁴

29. Exhibit PI-2017-004-3.01 (protected), Vol. 2 at 75.

30. *Ibid.* at 171.

31. *Ibid.* at 61, 171.

32. *Ibid.*

33. *Ibid.* at 60-61, 171.

34. *Ibid.* at 64-65.

49. The Tribunal finds, therefore, that the significant increase in subject goods in 2016 coincides with the one allegation of lost sales and a corresponding decrease in production and market share, which points to subject imports having displaced at least some domestic production and sales.³⁵

Profitability

50. As noted above, the CPMA did not provide complete and/or relevant financial data in its complaint. In particular, the financial data for two domestic producers was not up to date and, in two instances, it was not clear whether the data included export sales or not. Moreover, there was no attempt to consolidate the financial information of the CPMA's three members.

51. Given these flaws, the Tribunal probed the evidence in the complaint to assess the profitability of the domestic industry. It compiled the available financial data and developed a consolidated picture of the domestic industry's financial performance, as the Tribunal is required by *SIMA* to consider whether material injury has been caused to the domestic producers as a whole or to those domestic producers whose collective production constitutes a major proportion of the total domestic production. The Tribunal cannot only look at the impact on individual companies, but must focus its analysis on a consolidated basis for the domestic industry as a whole.

52. The Tribunal's consolidated data demonstrate that the financial performance of the domestic industry improved between 2014 and 2016 in terms of net sales value, gross margins and net income.³⁶ As such, the Tribunal does not find a reasonable indication that the domestic industry experienced a decline in profits.

Capacity and Capacity Utilization

53. The CPMA did not include data on production capacity in its complaint and included only incomplete data on capacity utilization rates.³⁷ As such, the Tribunal is unable to draw any meaningful conclusions with respect to these factors. However, the Tribunal accepts Primo's evidence that it increased its capacity in 2017 and that its capacity utilization rate has changed.³⁸

Employment, Wages and Hours Worked

54. The CPMA did not include data on wages and hours worked in its complaint. In addition, although each company included information on total employment, it is not clear whether these employees are all related to the production and sales of like goods.³⁹ Nonetheless, the Tribunal accepts Italtasta's evidence that it has laid off some employees due to imports of subject goods.⁴⁰

Causality and Materiality

55. In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping and subsidizing of the subject goods and the injury on the basis of the resultant impact of the volume and price effects of the dumped and subsidized

35. *Ibid.* at 61, 64-65, 171.

36. *Ibid.* at 154-57, 159, 168, 171; *ibid.* at 76-123.

37. *Ibid.* at 179.

38. Exhibit PI-2017-004-2.01, Vol. 1 at 194; Exhibit PI-2017-004-3.01 Vol. 2 at 179.

39. Exhibit PI-2017-004-3.01 (protected), Vol. 2 at 176, 184, 187.

40. Exhibit PI-2017-004-2.01, Vol. 1 at 199.

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*,⁴¹ caused injury.

56. The term “material” is not defined in *SIMA*. In the past, the Tribunal has considered this to mean something more than *de minimis* but not necessarily serious injury.⁴² In other words, the injury must be enough to matter in the particular circumstances of the case.

57. There is no bright line test or formula that can be applied to establish at which point injury becomes material. The Tribunal considers the materiality of any injury on a case-by-case basis, having regard to the extent, timing and duration of the injury.⁴³

58. In this case, there is evidence of lost sales and lost revenue with respect to sales into the retail private-label sub-segment of the domestic market which can be reasonably linked to the increased volume and low price of the subject goods. The Tribunal finds that the lost sales and lost revenue had a significant impact on the financial performance of the one domestic producer involved.⁴⁴

59. However, the financial performance of the domestic industry as a whole was relatively strong during the period examined. There is also no evidence in the complaint that the subject goods had a material presence in other market segments during the period examined, even though there is some evidence that small quantities have been imported for sale to institutional buyers.⁴⁵ As such, when the Tribunal considers the domestic industry on a consolidated basis, and looking at all market segments, the Tribunal finds that the injury experienced by the domestic industry to date is below what the Tribunal considers to be material.

60. For the foregoing reasons, the Tribunal finds that the evidence does not disclose a reasonable indication that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.

THREAT OF INJURY ANALYSIS

61. The Tribunal must now consider whether there is a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause material injury, taking into account the factors prescribed in subsection 37.1(2) of the *Regulations*. The Tribunal must also have regard to the factors in subsection 37.1(3) of the *Regulations* in order to assess whether the requisite causal relationship exists between the subject goods and any threat of injury.

62. The threshold for the “reasonable indication” standard is lower than the evidentiary standard that applies in a final injury inquiry. As noted above, this test is passed where the evidence is relevant, accurate and adequate; and in light of the evidence, the allegations stand up to a somewhat probing examination,

41. *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) at para. 44; *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; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 82.

42. *ABS Resin* (15 October 1986), CIT-3-86; *Unitized Wall Modules* (12 November 2013), NQ-2013-002 (CITT) at para. 58.

43. The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, “[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been for such a duration or to such an extent as to constitute ‘material injury’ within the meaning of *SIMA*”.

44. Exhibit PI-2017-004-3.01 (protected), Vol. 2 at 64-66.

45. Exhibit PI-2017-004-6.01, Vol. 3 at 1.

even if the theory of the case might not seem convincing or compelling. This threshold applies to the Tribunal's threat of injury analysis. The Tribunal notes that it does not have to be conclusively convinced by the evidence that the subject goods are threatening to cause injury to the domestic industry. At this stage, the analysis focuses on whether or not a reasonable indication of such a threat exists.

63. As it did in the injury portion of the analysis, the Tribunal probed the evidence on threat of injury and continued to give the complainants the benefit of the doubt. As will be demonstrated, the Tribunal finds that the evidence discloses a reasonable indication of threat of injury and is sufficient for the purposes of a preliminary injury inquiry.

Likely Price Effects

64. The CPMA submitted that the subject goods have captured market share by aggressively undercutting domestic market pricing. It submitted that the continued presence of low-priced subject goods in the domestic market will continue to exert downward pressure on the price of like goods, leading to more lost sales and material price depression.

65. As noted above, the evidence in the complaint provides a reasonable indication that Turkish producers have the ability to significantly undercut the prices of non-subject imports and like goods in the domestic market. The data in the complaint indicate that the subject goods have been the price leaders in the market since 2014, yet the average free on board unit value of the subject goods has dropped compared to 2014, decreasing by 11 percent from 2014 to 2016 and by a further 8 percent in Q1-Q3 2017 when compared to that same period in 2016.⁴⁶ This provides a reasonable indication that the price of the subject goods is likely to remain low in the near future and may possibly decrease further.

66. It can also be reasonably expected that the domestic industry will experience downward pressure on the price of like goods. As noted above, there is confidential evidence in the complaint that a domestic producer has lowered its prices in response to pressure from an important retailer and that a domestic producer lost a significant sale because its prices were not considered competitive.⁴⁷ Another domestic producer is projecting annual decreases in its net sales per pound and in its profit per pound from 2017 to 2019, which it attributes to the presence of low-priced subject goods.⁴⁸

67. On the basis of this evidence, the Tribunal finds that there is a reasonable indication that the domestic producers are likely to face increased pricing pressures in a highly competitive and price-sensitive market. If domestic producers do not lower prices to compete, they may risk losing sales.

68. Although to date the effects have been concentrated in the retail private-label sub-segment of the market, the evidence presented is sufficient to satisfy the Tribunal of the existence of a reasonable indication that these effects could spread to other segments of the domestic market as well. For example, Mr. Porco of Primo and Mr. DeMichino of Italtasta indicated that the price effects of the low-priced subject imports are cascading throughout the domestic market.⁴⁹ There is also confidential evidence that a major retailer has pressured domestic producers to lower the price of branded products by a significant amount.⁵⁰ On this point, however, the Tribunal notes that some of the examples of the likely price effects of the subject goods could have been better supported.

46. Exhibit PI-2017-004-2.01, Vol. 1 at 41, 185-87; Exhibit PI-2017-004-2.01, Vol. 1C at 247-48.

47. Exhibit PI-2017-004-3.01 (protected), Vol. 2 at 64-66.

48. *Ibid.* at 68.

49. Exhibit PI-2017-004-2.01, Vol. 1 at 193, 199.

50. Exhibit PI-2017-004-3.01 (protected), Vol. 2 at 64-66.

69. In sum, the Tribunal finds that there is a reasonable indication that the subject goods are entering the domestic market at prices that are likely to have a significant depressing effect on the price of like goods.

Likely Substantial Increase in Volumes of Subject Goods

70. The CPMA submitted that the volume of imports of subject goods will continue its upward trend and that the subject goods will continue to capture market share from the domestic industry. The CPMA also submitted that there is excess production capacity in Turkey and that the Turkish producers of subject goods are export-oriented.

71. According to a USDA Foreign Agricultural Service report on Turkey from 2017, filed with the complaint, there are 23 active pasta factories in Turkey with more than 2 million MT of annual production capacity.⁵¹ This report also indicates that the combined capacity utilization rate of the Turkish producers is over 70 percent, which indicates production of approximately 1.4 million MT and unutilized capacity of approximately 600 000 MT.⁵² The Tribunal finds that this data reasonably indicates that there is excess production capacity in Turkey.

72. The complaint demonstrated that production of subject goods has significantly increased since 2009 but that consumption in Turkey has not increased at the same rate.⁵³ Moreover, there is evidence that exports of the subject goods increased by 215 percent between 2009 and 2015 and by 24 percent between 2015 and 2016.⁵⁴ The complaint also included an article in which a member of the board of Turkey's Pasta Industrialists Association indicates that Turkey has plans to further increase its production for export by 2023, with a target of 2 million tons.⁵⁵ On balance, the Tribunal finds this evidence sufficient to establish a reasonable indication that the Turkish producers are export-oriented. The Tribunal also finds the difference between the 2016 estimate of export volumes and the 2023 target to be significant—a 140 percent increase in seven years—and that it could point to a potential increase in the exports of the subject goods.

73. The availability of other export markets to absorb any increase is something that the Tribunal intends to explore in the context of its final injury inquiry. The CPMA referred to measures in place against the subject goods in the United States. These measures have been in place since 1996 and Turkish producers and exporters have likely adjusted to them. As such, the Tribunal is not convinced that, after being in place for more than 20 years, they represent any significant risk of diversion at this point in time. For similar reasons, the Tribunal is also not convinced that the tariff quota imposed by the European Union in 2007 presents a significant risk of diversion.

74. Nonetheless, the Tribunal acknowledges that the unutilized capacity in Turkey represents an amount that is approximately three times the CPMA's estimate of the size of the Canadian dry pasta market.⁵⁶ If even a portion of this excess capacity was exported to Canada, it could have a significant impact on the domestic market. The Tribunal also acknowledges that there is a tariff-rate quota in place in Canada for wheat products, including pasta. However, for the majority of the tariff classifications under which the

51. Exhibit PI-2017-004-2.01, Vol. 1A at 14.

52. *Ibid.*

53. Exhibit PI-2017-004-2.01, Vol. 1 at 39.

54. Exhibit PI-2017-004-2.01, Vol. 1A at 333-34.

55. Exhibit PI-2017-004-2.01, Vol. 1C at 3.

56. Exhibit PI-2017-004-3.01 (protected), Vol. 2 at 171.

subject goods have been imported to date, the applicable rates are such that they would not, by themselves, serve as an effective barrier to entry into Canada.⁵⁷

75. The Tribunal recalls its earlier conclusion that the volume of imports of subject goods has been steadily and significantly increasing since 2014. The Tribunal also finds that there is a reasonable indication that Turkish exporters are able and willing to increase the volume of subject goods destined for Canada, if the market conditions warrant such an increase and there is demand for their product. In that regard, the Tribunal notes that there is evidence showing that Loblaws Inc., a major Canadian retailer, uses subject goods for certain President's Choice, PC Blue Menu and No Name private-label pasta products.⁵⁸ These products cover a range of price points. There is also evidence that small quantities of subject goods have been sold into other, non-retail, segments of the market.⁵⁹

76. On the basis of the evidence that the subject goods are priced aggressively and are likely to remain the price leader in the domestic market in the near future, and noting the excess production capacity and export orientation of the Turkish producers, the Tribunal finds that there is a reasonable indication that the volume of imports of subject goods is likely to increase substantially.

Likely Impact

77. The Tribunal finds that there is a reasonable indication that the increased volumes of the subject goods at prices which undercut the price of like goods is likely to impede the domestic industry's ability to maintain sales at current prices and volumes, particularly with respect to the retail segment of the market. In some cases the domestic industry may have no choice but to reduce its prices in order to remain competitive, resulting in reduced net sales revenue on both a per unit and margins basis. As noted above, the complaint included evidence that this has already happened at least once. In other cases the domestic industry may try to keep prices at current levels and risk losing sales, market share and production volumes. The complaint included an example of this as well. The Tribunal is satisfied that in either case the domestic industry's profitability is likely to suffer.

78. The timing, extent, and materiality of this likely impact will be explored more fully as part of the Tribunal's final injury inquiry. In addition, as part of that inquiry the Tribunal expects to see more complete information about the following:

- pricing, including how prices are set in the various market segments (e.g. the terms of the long-term contracts in the industrial and food services segments, retail pricing arrangements);
- the market dynamics of the dry wheat pasta industry;
- the degree of price transparency within and between the different market segments; and
- specific allegations of injury, including whether and how any specific accounts have been, or are being, threatened.

57. According to the complaint, most of the subject goods have been imported under tariff item Nos. 1902.19.21, 1902.19.22 and 1902.19.23. See Exhibit PI-2017-004-2.01, Vol. 1 at paras. 12, 125. The Tribunal notes that goods imported under tariff item Nos. 1902.19.21 and 1902.19.22 are duty-free. The rate of duty for tariff item No. 1902.19.23 is \$0.1627 per kilogram.

58. Exhibit PI-2017-004-2.01, Vol. 1 at 140-61.

59. Exhibit PI-2017-004-6.01, Vol. 3 at 1.

79. On the basis of the above, and bearing in mind the lower evidentiary threshold applicable in a preliminary injury inquiry, the Tribunal finds that the evidence, taken as a whole, discloses a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury.

80. While the Tribunal finds the evidence sufficient for the purposes of this preliminary injury inquiry, it wishes to signal that additional details and supporting documentation will need to be provided in the context of a final injury inquiry, where the evidence will be assessed on the basis of a higher threshold.

CONCLUSION

81. On the basis of the foregoing analysis, the Tribunal finds that the requirement of subsection 37.1(1) of *SIMA* has been met, in that there is evidence that 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.

82. The Tribunal notes that a final injury inquiry is triggered by the making of a preliminary determination of dumping or subsidizing by the CBSA and that the scope of the Tribunal's final injury inquiry, as set out in section 42 of *SIMA*, is not limited by the Tribunal's determination in this preliminary injury inquiry. In other words, as a result of the statutory scheme, the Tribunal's final injury inquiry will not be restricted to determining whether there is a threat of injury.

83. Therefore, should the CBSA make a preliminary determination that the subject goods are dumped or subsidized, then the Tribunal shall, pursuant to section 42 of *SIMA*, inquire into whether the dumping or subsidizing has caused or is threatening to cause injury.

Jean Bédard

Jean Bédard
Presiding Member

Ann Penner

Ann Penner
Member

Rose Ritcey

Rose Ritcey
Member