



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2018-001

Sucker Rods

*Determination issued
Tuesday, July 17, 2018*

*Reasons issued
Wednesday, August 1, 2018*

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

SUCKER RODS

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 and subsidizing of sucker rods, including pony rods, with or without couplings attached and with or without guides attached, manufactured to American Petroleum Institute (API) 11B specifications, equivalent standards or proprietary standards, including in a finished or semi-finished state, made of solid steel, including carbon, alloy and special grades of steel, of 2.5 inches (63.5 mm) or less in diameter of rod body, with stated measurements subject to permissible tolerances, 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 May 18, 2018, 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.

Serge Fréchette
Serge Fréchette
Presiding Member

Peter Burn
Peter Burn
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 March 29, 2018, Alberta Oil Tool (AOT), a division of Apergy Canada ULC (formerly a division of Dover Canada ULC) filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping and subsidizing of certain sucker rods originating in or exported from the People's Republic of China (China) (the subject goods) have caused injury or are threatening to cause injury to the domestic industry.
2. On May 18, 2018, the CBSA initiated investigations respecting the dumping and subsidizing of the subject goods, pursuant to subsection 31(1) of *Special Import Measures Act*.¹ In its statement of reasons concerning the initiation of those investigations, the CBSA estimated that, for the period from January 1, 2017, to March 31, 2018, the subject goods were dumped by a margin of 92.5 percent and were subsidized by an amount of subsidy of 28.9 percent, both expressed as a percentage of the export price.
3. As a result of the CBSA's decision to initiate the investigations, on May 22, 2018, the Canadian International Trade Tribunal (the Tribunal) began its preliminary injury inquiry, pursuant to subsection 34(2) of *SIMA*, to determine whether there is 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.
4. On July 17, 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. The goods subject to the investigations were defined as follows by the CBSA:²

[s]ucker rods, including pony rods, with or without couplings attached and with or without guides attached, manufactured to American Petroleum Institute (API) 11B specifications, equivalent standards or proprietary standards, including in a finished or semi-finished state, made of solid steel, including carbon, alloy and special grades of steel, of 2.5 inches (63.5 mm) or less in diameter of rod body, with stated measurements subject to permissible tolerances, originating in or exported from the People's Republic of China.

PARTIES' SUBMISSIONS

6. AOT argued in its complaint that imports of the subject goods, which have been increasing since 2014 and have escalated in 2017, are exerting downward pricing pressure on the market. According to AOT, this has resulted in lost sales and market share, price erosion, price suppression, and a significant decline in the profitability of the domestic industry. AOT also argued that the subject goods pose a threat of continued and increased injury if no duties are imposed.
7. Imex Canada Inc. (Imex) filed a submission opposing the complaint. Imex highlighted that AOT is the only producer of sucker rods in Canada and indicated that it opposed the "monopoly" of a single manufacturer to serve all sucker rod requirements in Canada. Imex also appeared to contest the existence of

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

2. Exhibit PI-2018-001-05, Vol. 1D at 81-85. The CBSA's statement of reasons also includes additional information describing the subject goods.

any significant price advantage of the subject goods sold in Canada. It further submitted that AOT does not have the capacity to supply the entire Canadian market, and that the imposition of duties would create injury to downstream industries and jobs greater than any injury to the domestic industry it might prevent. It suggested finally that AOT has failed to increase the number of its distributors and its production capacity, and that it engages in strategies to keep prices artificially high.

8. As further explained below, the Tribunal's mandate in a preliminary injury inquiry pursuant to subsection 34(2) of *SIMA* is limited to determining whether the evidence discloses a reasonable indication that the dumping or subsidizing of subject goods has caused, or threatens to cause, injury to the domestic industry. In this context, the Tribunal cannot take into consideration arguments or evidence relating to the impact of a potential imposition of duties on end users, downstream industries or competition in the market generally. Such considerations can only be addressed in the context of a public interest inquiry conducted pursuant to section 45 of *SIMA*, which may only take place should the Tribunal make a finding of injury or threat of injury following its final injury inquiry under section 42 of *SIMA*.

9. As such, the Tribunal will only consider those of Imex's submissions that relate to the question of a reasonable indication of injury or threat of injury. The Tribunal expresses no view on the remainder of Imex's arguments.

LEGISLATIVE FRAMEWORK

10. 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 . . . is threatening to cause injury."³

11. 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*.⁴ The term "reasonable indication" is not defined in *SIMA*, but is understood to mean that the evidence in question need not be "conclusive, or probative on a balance of probabilities".⁵

12. The Tribunal has previously been satisfied that the threshold for the "reasonable indication" standard was met where:⁶

- 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.

3. 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.

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

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

6. *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.

13. 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. At this early stage, the Tribunal will give complainants the benefit of the doubt, where necessary.

14. 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 and sufficient evidence. Such evidence must also be relevant, in that it addresses the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.⁹

15. In 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 or subsidized goods, the effect of the dumped or subsidized goods on the price of like goods, the resulting economic impact of the dumped or subsidized goods on the domestic industry and, if injury or threat of injury¹⁰ is found to exist, whether a causal relationship exists between the dumping or subsidizing of the goods and the injury or threat of injury.

16. Before examining the allegations of injury or threat of injury, the Tribunal must, however, 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, as well as the domestic industry that produces those like goods. This analysis 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” Subsection 2(1) of *SIMA* further 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.”

LIKE GOODS AND CLASSES OF GOODS

17. AOT submitted that sucker rods produced in Canada were “generally identical” to the subject goods, as both AOT and Chinese producers manufacture goods for oil and gas operations to the API 11B specification. While some AOT products might have improved characteristics, they generally remain interchangeable with the subject goods. AOT also submitted that the subject and like goods constitute a single class of goods, as they serve the same purpose of connecting the above-ground drive to the down-hole pump, are finished goods having compatible threading that are intended to be connected together, are

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

8. Article 5 of the World Trade Organization *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* requires an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping 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 or injury. Article 5 also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article.

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

10. In its consideration of whether there is a reasonable indication that the dumping or subsidizing of the subject goods is 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 to API 11B or a comparable specification, consist of the same materials, are produced on the same equipment using essentially the same processes, and are sold through the same channels of distribution to the same oil and gas end users.¹¹

18. AOT further submitted that there is a high degree of substitutability between different sucker rods covered by the product definition. In particular, according to AOT, lower and higher grades of sucker rod are both substitutable for the other; thicker sucker rods can, in some cases, be substituted for thinner sucker rods, and guided rods can compete with unguided rods.¹²

19. Imex made no submissions on the issues of like goods and classes of goods.

20. In light of the foregoing, and of the factors relevant to the issues of like goods and classes of goods,¹³ the Tribunal finds that the domestically produced sucker rods of the same description as the subject goods are “like goods” in relation to the subject goods and that there is a single class of goods.

DOMESTIC INDUSTRY

21. The evidence indicates that AOT is the only domestic producer of sucker rods. AOT therefore represents the domestic industry.

INJURY ANALYSIS

Import Volume of Subject Goods

22. No published volume statistics are available for imports of sucker rods. AOT estimated the volume of imports of subject goods by applying an average unit value, estimated on the basis of AOT’s market intelligence on the pricing of subject goods, to publicly available Statistics Canada data on the dollar value of imports.¹⁴ AOT’s estimate shows that, after declining 46 percent in 2015 compared to 2014, the volume of imports of subject goods increased 37 percent in 2016 and 141 percent in 2017.¹⁵

23. The CBSA assessed the trends in the value of imports based on its own estimated import value data. The CBSA found that import values increased from \$9.3 million in 2014 to \$15 million in 2017.¹⁶

24. The Tribunal applied the estimated average unit values provided in the complaint to the CBSA’s yearly value of imports data. The results show a 47 percent decline in the volume of subject goods in 2015, followed by increases of 39 percent in 2016 and 123 percent in 2017. In addition, the volume of imports of the subject goods increased relative to the production and consumption of the like goods in 2016 and in 2017.

11. Exhibit PI-2018-001-02.01, Vol. 1 at 14-17.

12. *Ibid.* at 9-11.

13. In deciding the issues of like goods and classes of goods, the Tribunal considers 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). *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

14. AOT’s methodology is further described in Exhibit PI-2018-001-02.01, Vol. 1 at 39-42.

15. Exhibit PI-2018-001-03 (protected), Vol. 2 at 41.

16. Exhibit PI-2018-001-05, Vol. 1D at 97. See also Exhibit PI-2018-001-03.02A (protected), Vol. 2B at 237.

25. The Tribunal finds that there is a reasonable indication of a significant increase in the absolute and relative volume of imports of the subject goods over the period of inquiry.

Effect on Prices of Like Goods

26. Published average pricing data for the subject goods are not available. To show the existence of pricing pressure in the market caused by the subject goods, AOT relied on several specific injury allegations.

27. Imex's submissions suggested that the subject goods sold in the Canadian market have no significant price advantage compared to the domestic like goods. However, Imex provided no specific pricing evidence.

28. Some of AOT's specific injury allegations included notes and correspondence with specific details indicating that, on multiple occasions, a bid offering subject goods had undercut the bid offering domestic like goods by a significant margin.¹⁷ The examples provided are recent (relating mainly to 2017 and 2018), appear to correspond with a period of increased volumes of imports of the subject goods, and suggest the magnitude of undercutting by the subject goods was significant. While such evidence would need to be fully tested in the context of a final injury inquiry, the Tribunal accepts that, for the purposes of the preliminary injury inquiry, it is sufficient to meet the reasonable indication standard.

29. AOT's average selling price for domestic sales declined in 2015 and 2016 and increased in 2017,¹⁸ indicating that there may have been some price depression at the aggregate level in 2015 and 2016. While AOT alleged that in several instances, it had to reduce its prices to win a sale faced with competition from the subject goods,¹⁹ it included insufficient specific pricing details, supporting documentation or comparison points on which to assess the existence and cause of any trend in prices. The data will be further analyzed during the final injury inquiry to assess this potential price effect of the subject goods.

30. With respect to price suppression, the evidence indicates that AOT has not been able to increase selling prices in step with increases in steel bar costs, a major direct material cost. Further, AOT's financial statements suggest that it experienced price suppression from 2015 through 2017, and that this price suppression was most severe in 2017, when the cost of goods sold (COGS) increased substantially but selling prices did not.²⁰ This apparent price suppression coincides with the accelerated rate of increase in the volume of imports of the subject goods in 2017. Furthermore, AOT provided clear evidence indicating that it tried to implement a price increase effective mid-October 2017 to offset part of its increasing costs of production, but was met with strong pushback from its customers citing price competition from the subject goods.²¹

31. Bearing in mind the lower standard applicable at the preliminary injury inquiry stage, the Tribunal finds that this evidence reasonably indicates the existence of significant undercutting and price suppression by the subject goods, particularly in 2017.

17. Exhibit PI-2018-001-03.01 (protected), Vol. 2 at 44, 47-49, 236-239, 245-246, 285-288.

18. *Ibid.* at 170.

19. Exhibit PI-2018-001-02.01, Vol. 1 at 45-46; Exhibit PI-2018-001-03.01 (protected), Vol. 2 at 295.

20. *Ibid.* at 170.

21. *Ibid.* at 44-45, 283-290.

Resultant Impact on the Domestic Industry

32. AOT submitted that it has been injured by the subject goods through lost sales and reduced profit margins, production, capacity utilization and employment levels. AOT acknowledged that factors other than the subject goods have had a negative impact on the domestic industry. These factors include the overall decline in the price of oil since the end of 2014, as well as regulatory requirements in relation to oil production that may reduce the demand for oil and gas production equipment in Canada.²² However, AOT highlighted that the sucker rods market saw a hesitant recovery starting in mid-2016 and 2017, and submits that it was hindered in its ability to benefit from this recovery due to the subject goods.

33. Imex's submissions suggested that AOT has been "imprudent" by failing to increase its capacity and number of distributors in Canada, and that it has attempted to keep prices artificially high. Imex did not provide supporting evidence for these claims.

34. 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 experienced 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 and subsidizing of the subject goods have, *in and of themselves*,²³ caused injury.

35. AOT's financial statements suggest an overall deterioration in the performance of the domestic industry. After consecutive declines in 2015 and 2016, total production, capacity utilization, total sales (domestic and export sales combined) from domestic production (in pieces) and employment improved in 2017, although they remained well below 2014 levels. Domestic sales from domestic production declined dramatically in 2015 before registering improvements in 2016 and 2017, resulting in overall lower levels in 2017 compared to 2014.²⁴

36. AOT's profitability deteriorated steadily from 2014 to 2017. Despite the improvement in other performance indicators in 2017, AOT's gross and net profit margins for domestic sales reached their lowest point in that year. This appears to be related to AOT's inability to increase prices in line with increasing COGS in 2017, as discussed above. This also coincides with both the relative improvement in total apparent market demand for sucker rods in 2017 and with the significantly increased imports of the subject goods in that same year, suggesting a causal link between the subject goods and AOT's declining profitability.²⁵

37. In addition, AOT's market share seems to have declined, reaching the lowest point in 2016 then recovering somewhat in 2017. In contrast, the market share of the subject goods expanded continuously from 2014 to 2017.²⁶ AOT's evidence in respect to specific sales lost to bids offering subject goods supports

22. Exhibit PI-2018-001-02.01, Vol. 1 at 52-53.

23. *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.

24. Exhibit PI-2018-001-03.01 (protected), Vol. 2 at 51, 170, 171. The Tribunal observes that, despite an overall improvement in total sales in 2017, domestic and export sales performed differently, with domestic sales increasing compared to 2016 and export sales continuing to decrease.

25. *Ibid.* In contrast to its domestic sales, AOT's net and gross margins on export sales improved in 2017 compared to 2016.

26. *Ibid.* at 40-43; Exhibit PI-2018-001-03.02 (protected), Vol. 2A at 46. Market share estimated based on volume data derived by using the CBSA's import value data and average unit values from the complaint show similar trends.

a reasonable indication that the domestic industry lost sales and market share due to the subject goods in 2016, 2017 and 2018.²⁷

38. The Tribunal finds that the evidence discloses a reasonable indication that the domestic industry experienced injury, particularly in 2017, and that the increasing presence of the dumped and subsidized goods was a cause of this injury. During the final injury inquiry, the Tribunal will be particularly mindful of the various factors and market dynamics that may be affecting the state of the domestic industry in order to fully establish the existence of a causal link between the dumping and subsidizing of subject goods and the material injury to the domestic industry.

39. As a result of the above finding, the Tribunal will exercise judicial economy and will not consider whether there is a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury.

CONCLUSION

40. The Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

Serge Fréchette
Serge Fréchette
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Peter Burn
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Member

27. Exhibit PI-2018-001-03.01 (protected), Vol. 2 at 47-49 and accompanying supporting appendices to the complaint.