



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2019-001

Sucker Rods

*Determination issued
Friday, November 29, 2019*

*Reasons issued
Thursday, December 12, 2019*

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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 (SIMA)*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping 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 Argentine Republic, the Federative Republic of Brazil and the United Mexican States, has caused injury or retardation or is threatening to cause injury, as these words are defined in *SIMA*.

This preliminary injury inquiry follows the notification, on September 30, 2019, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *SIMA*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping of the above-mentioned goods has caused or is threatening to cause injury to the domestic industry.

Jean Bédard

Jean Bédard

Presiding Member

Peter Burn

Peter Burn

Member

Georges Bujold

Georges Bujold

Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

INTRODUCTION

[1] On August 9, 2019, Alberta Oil Tool (AOT), a division of Apergy Canada ULC, filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping of certain sucker rods originating in or exported from the Argentine Republic (Argentina), the Federative Republic of Brazil (Brazil) and the United Mexican States (Mexico) (the subject goods) have caused injury or are threatening to cause injury to the domestic industry.

[2] On September 30, 2019, the CBSA initiated an investigation respecting the dumping of the subject goods pursuant to subsection 31(1) of the *Special Import Measures Act*.¹ In its statement of reasons concerning the initiation of this investigation, the CBSA estimated that, for the period from July 1, 2018, to June 30, 2019, the subject goods from Argentina were dumped by a margin of dumping of 7.60%; the subject goods from Brazil were dumped by a margin of dumping of 2.89%; and the subject goods from Mexico were dumped by a margin of dumping of 11.08%, each expressed as a percentage of the export price.²

[3] As a result of the CBSA's decision to initiate the investigation, on October 1, 2019, 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 of the subject goods has caused injury or is threatening to cause injury to the domestic industry.

[4] AOT's complaint and this inquiry follow closely after the Tribunal's Inquiry No. NQ-2018-001,³ which resulted in the Tribunal finding, in December 2018, that dumped and subsidized imports of sucker rods from China, defined in the same manner as the goods subject to the present preliminary inquiry, had caused injury to the domestic industry.

[5] Tenaris Global Services (Canada) Inc. (Tenaris Canada) filed a notice of participation in the Tribunal's preliminary injury inquiry but did not make submissions. According to the complaint and to available evidence, Tenaris Canada is the sole importer of the subject goods, and entities affiliated with Tenaris S.A. (Tenaris) are the sole producers and exporters of the goods subject to the present inquiry.⁴ The governments of Argentina, Brazil, and Mexico also filed notices of participation but did not make submissions. Finally, the complainant also did not make further submissions following the filing of its complaint.

[6] On November 29, 2019, 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. The following are the reasons for this determination.

PRODUCT DEFINITION

[7] The subject goods were defined as follows by the CBSA:

¹ R.S.C., 1985, c. S-15. [*SIMA*]

² Exhibit PI-2019-001-05, Vol. 1, Table 2 at 12.

³ *Sucker Rods* (14 December 2018), NQ-2018-001 (CITT) [*Sucker Rods INQ*].

⁴ Exhibit PI-2019-001-02.01, Vol. 1, at 117-119; Exhibit PI-2019-001-03.02 (protected), Vol. 2, at 4-5.

[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 Argentine Republic, the Federative Republic of Brazil and the United Mexican States.⁵

AOT'S SUBMISSIONS

[8] AOT argued in its complaint that the imposition of anti-dumping and countervailing measures as a result of the Tribunal's finding in *Sucker Rods I* resulted in a significant decrease of Chinese sucker rods in the Canadian market. AOT alleged that the subject goods have replaced Chinese imports as the low-price leaders in the market, and have captured all or nearly all the market share previously lost by AOT to dumped and subsidized Chinese sucker rods. AOT claims that the subject imports have done so through aggressive pricing and what appears to be a concerted campaign to capture market share.

[9] AOT submitted that the subject goods have caused material injury to the domestic industry through price undercutting and price suppression, which resulted in significant adverse impacts on its performance. AOT further argued that the dumping of the subject goods poses an imminent and foreseeable threat of injury to the domestic industry if no duties are imposed.

LEGISLATIVE FRAMEWORK

[10] The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine "whether the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury."

[11] 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".⁶ The reasonable indication standard is lower than the standard that applies in a final injury inquiry under section 42 of *SIMA*.⁷

[12] 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 there is no oral hearing to fully probe what is available. As a result, the evidence cannot be tested to the same extent as it would during a final injury inquiry.

[13] The standard of evidence at this stage of the inquiry is lower than at the final stage and complaints will be read generously. The Tribunal typically gives the complainants the benefit of the doubt.⁸

⁵ Exhibit PI-2019-001-05, Vol. 1 at 2. The CBSA's statement of reasons also includes additional information describing the subject goods.

⁶ *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

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

⁸ *Sucker Rods I PI* (17 July 2018), PI-2018-001 (CITT) [*Sucker Rods I PI*] at para. 13; *Certain Fabricated Industrial Steel Components* (10 November 2016), PI 2016-003 (CITT) at para. 13.

[14] However, the outcome of preliminary injury inquiries must not be taken for granted.⁹ Simple assertions are not sufficient.¹⁰ 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*.¹¹

[15] Before examining the allegations of injury or threat of injury, 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, 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

[16] In the complaint, AOT submitted that the domestically produced sucker rods are like goods in relation to the subject goods and that there is a single class of goods. AOT’s submissions in this respect are consistent with the Tribunal’s findings on the issues of like goods and classes of goods in *Sucker Rods I*.¹² There is also evidence on the record which supports these findings.¹³ Thus, the Tribunal sees no reason to depart from its findings on these issues in *Sucker Rods I*.

[17] Accordingly, the Tribunal will conduct its analysis on the basis that sucker rods produced in Canada that are 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

[18] The evidence indicates that AOT is the only domestic producer of sucker rods. Accordingly, AOT constitutes the domestic industry. This is consistent with the Tribunal’s findings in *Sucker Rods I*.¹⁴

⁹ *Reinforcing Bar* (12 August 2014), PI-2014-001 (CIIT) 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* 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.

¹¹ S.O.R./84-927 [*Regulations*].

¹² *Sucker Rods I PI* at para. 20; *Sucker Rods INQ* at para. 39.

¹³ Exhibit PI-2019-001-03.02 (protected), Vol. 2 at 9.

¹⁴ *Sucker Rods INQ*, para. 42.

CUMULATION

[19] In the context of a final injury inquiry, subsection 42(3) of *SIMA* requires the Tribunal to make an assessment of the cumulative effect of the dumping of goods that are imported into Canada from more than one subject country if the Tribunal is satisfied that the following conditions are met:

- (a) the margin of dumping in relation to the goods from each of the countries is not insignificant and the volume of goods imported into Canada from any of those countries is not negligible; and
- (b) an assessment of the cumulative effect of the subject goods would be appropriate taking into account the conditions of competition between the goods from any of the subject countries, the other dumped goods, and like goods.

[20] While subsection 42(3) of *SIMA* deals with final injury inquiries, the Tribunal normally applies the same framework in preliminary injury inquiries.¹⁵

[21] As the CBSA has estimated that the margin of dumping for each of the subject countries is not insignificant, and given that the estimated volumes of dumped goods for each subject country are not negligible,¹⁶ the Tribunal finds that the first condition has been met.

[22] With respect to the second condition, the evidence on record indicates that the same conditions of competition exist among the subject goods and between the subject goods and the domestic like goods. In this respect, the Tribunal notes that sucker rods are generally produced to API 11B or equivalent specifications, which suggests that the subject goods are interchangeable amongst themselves and with the like goods, and that in *Sucker Rods INQ*,¹⁷ it found that sucker rods are commodity products. In addition, in the present inquiry, the subject goods from all three subject countries are produced and exported by related entities (i.e. Tenaris affiliates) and they are all imported into Canada by a single entity, Tenaris Canada.¹⁸ Finally, the complaint included a number of account-specific allegations and supporting evidence that provide a reasonable indication that the subject goods from each of the three subject countries are in direct competition with the domestically produced like goods.

[23] On the basis of the foregoing, the Tribunal finds it appropriate to conduct an assessment of the cumulative effect of the subject goods from all sources for the purposes of this preliminary injury inquiry.

INJURY ANALYSIS

Import Volume of Dumped Goods

[24] No published statistics concerning the volume of imports of sucker rods are available. AOT estimated the volume of imports of subject goods (in number of pieces) by applying an

¹⁵ *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 40; *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.

¹⁶ Exhibit PI-2019-001-05, Vol. 1, para. 108; Exhibit PI-2019-001-03.02, Vol. 2 at 23.

¹⁷ *Sucker Rods INQ*, para. 46.

¹⁸ *Supra*, para. [5]; Exhibit PI-2019-001-02.01, Vol. 1, at 117-119; and Exhibit PI-2019-001-03.02 (protected), Vol. 2, at 4-5.

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 value of imports. In addition, AOT made adjustments to account for imports of non-subject goods.¹⁹

[25] AOT's estimate shows a significant increase in the volume of subject goods, both in absolute terms and in relation to domestic production and to domestic sales from domestic production, in every period considered (from 2016 to 2017, from 2017 to 2018, and from H1 2018 to H1 2019).²⁰

[26] The CBSA conducted its own analysis of imports of the goods based on CBSA's import value data, which demonstrated similar trends compared to the information provided in the complaint.²¹

[27] The Tribunal applied the estimated average unit values provided in the complaint to the yearly value of imports estimated by the CBSA. The results show a massive increase in the absolute and relative volume of subject imports during the period from 2016 to H1 2019. In absolute terms, subject imports increased by 253% in 2017 from 2016, and increased by a further 7% in 2018 from 2017. The latter increase occurred at the same time as the market contracted. The data set relied upon by the Tribunal did not include volume data for H1 2018 and consequently, the Tribunal could not perform a comparison between subject import volumes in H1 2018 and H1 2019.

[28] In sum, the evidence provides a reasonable indication of a significant increase in the volume of imports of subject goods.

Effects on Prices of Like Goods

[29] To show the existence of pricing pressure in the market caused by the subject goods, AOT relied on a number of specific injury allegations in its complaint.

[30] AOT submitted account-specific examples of price undercutting by the subject goods during the period from July 2017 to January 2019, as well as account-specific examples of sales lost to the subject goods during the period following the imposition of provisional duties on sucker rods from China until the filing of the complaint (Q3 2018 through Q2 2019).²² The examples provided are recent and suggest that the magnitude of undercutting by the subject goods was significant. While such evidence would need to be more 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.

[31] With respect to price suppression, the evidence submitted by AOT provides a reasonable indication that AOT has not been able to increase selling prices in step with increases in steel bar ("special bar quality", or SBQ) costs, a major direct material cost.²³ Further, AOT's financial

¹⁹ AOT's methodology is further described in Exhibit PI-2018-003.01 (protected), Vol. 2, paras. 86-92 at 32-33.

²⁰ Exhibit PI-2019-001-003.01 (protected), Vol. 2, paras. 93-96 at 34-35.

²¹ Exhibit PI-2010-001-005, Vol. 1, para. 44 at 9; see also Exhibit PI-2019-001-03.02 (protected), Vol. 2 at 13-15.

²² Exhibit PI-2019-001-03.01 (protected), Vol. 2, para. 98 and Table 10 at 36-37 and paras. 16-32 at 504-512.

²³ Exhibit PI-2019-001-03.01 (protected), Vol. 2, paras. 33-46 at 512-518, and 658.

statements suggest reduced profitability at both the gross margin and the net income level as the cost of goods sold increased.²⁴

[32] Bearing in mind the lower standard applicable at the preliminary injury inquiry stage, the Tribunal finds that the evidence reasonably indicates the existence of significant undercutting and price suppression.

Resultant Impact on the Domestic Industry

[33] As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal must consider the impact of the dumped 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.

[34] In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping of the subject goods and the injury on the basis of the resultant impact of the volume and price effects of the dumped goods on the domestic industry. The standard is whether there is a reasonable indication that the dumping of the subject goods has, *in and of itself*,²⁵ caused injury.

[35] In the complaint, AOT submitted that the subject goods have caused material injury to the domestic industry through price undercutting and price suppression, leading to significant lost revenues and adverse impacts on its sales, production, capacity utilization, employment, investment, and profitability.

[36] Having reviewed the evidence submitted by AOT on the confidential and public record in light of the relevant factors, the Tribunal finds that it reasonably supports its allegations for the purpose of this preliminary injury inquiry. Bearing in mind the lower standard applicable at the stage of the preliminary inquiry, the evidence provides a reasonable indication that the dumping of the subject goods has caused material injury to the domestic industry.

[37] The evidence submitted by AOT reveals negative developments in sales, capacity utilization, employment and profitability that appear to coincide with the increase in the volume of subject goods.²⁶ While this evidence might not be sufficient to satisfy the relevant standard in the context of a final injury inquiry, it meets the “reasonable indication” threshold applicable in the context of a preliminary injury inquiry. In the confidential version of the complaint, AOT also alleges a further negative development, which will need to be further investigated at the final inquiry stage.²⁷

[38] The significance of the negative impact of the dumped goods on the domestic industry would have been exacerbated by the fact that it took place at a time when the domestic industry had no time or opportunity to recover from the injury experienced as a result of dumped and subsidized imports of sucker rods from China.

²⁴ Exhibit PI-2019-001-03.01 (protected), Vol. 2 at 228.

²⁵ *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.

²⁶ Exhibit PI-2019-001-03.01 (protected), Vol. 2 at 43-44, 228, 477 and 660.

²⁷ Exhibit PI-2019-001-03.01 (protected), Vol. 2, para. 110 at 42 and paras. 50-52 at 519-520.

[39] Overall, the Tribunal finds that the evidence discloses a reasonable indication that the domestic industry experienced injury and that the increasing presence of the dumped goods was a cause of this injury.

[40] 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 of subject goods and the material injury to the domestic industry.

THREAT OF INJURY ANALYSIS

[41] Turning to the issue of threat of injury, AOT's evidence in the complaint focused on the likely displacement of demand from the United States market resulting from additional production capacity becoming available in that country and on weak demand forecasts in the subject countries.

[42] Specifically, AOT noted that a new Tenaris plant with a capacity of 1.8 million pieces came online in the United States in 2019. AOT estimated that the production capacity of the new facility represents 84% of Tenaris's capacity in the three subject countries and that the subject countries' exports of sucker rods to the United States are equal to multiple times the entire Canadian market for sucker rods.²⁸

[43] The Tribunal is satisfied that the evidence submitted by AOT reasonably indicates that this additional production capacity in the United States is likely to further encourage exports of the subject goods to Canada by displacing exports from the subject countries that were previously destined to the United States.

[44] AOT also argued that market conditions in the three subject countries will encourage further exports of subject goods to Canada. In support of these allegations, AOT submitted evidence showing that demand for the subject goods (which are used only in the extraction of oil from onshore wells) in each of the subject countries is likely to be weak.

[45] The evidence submitted by AOT in this regard reasonably supports its allegations. It shows (i) decreasing oil production levels in Mexico and a high level of indebtedness by PEMEX (the state-owned oil producer), which casts doubt on its ability to invest resources to increase oil production in its onshore facilities;²⁹ (ii) a decrease and even potential halt in onshore oil production in Brazil;³⁰ (iii) uncertain or negative forecasts with respect to oil production in the Vaca Muerte Formation, a large Argentine shale oil field, in light of high costs of production, the Argentine recession and the resulting scaling back of Argentina's oil subsidy program, and decreasing investments by the state-owned oil company, YPF.³¹

[46] In addition, AOT alleges, and the Tribunal is satisfied that, absent protection, the significant rate of increase, in absolute and relative terms, of the subject goods into the Canadian market over the last few years will continue in the foreseeable future, and that the subject goods will continue to exert significant downward pressure on the prices of the like goods.

²⁸ Exhibit PI-2019-001-02.01, Vol. 1, at 45-47 and 397-400.

²⁹ Exhibit PI-2019-001-02.01, Vol. 1, at 409, 424-428, and 876-879.

³⁰ Exhibit PI-2019-001-02.01, Vol. 1, at 421-423, 432-433.

³¹ Exhibit PI-2019-001-02.01, Vol. 1, at 802-804, 807-810, 814-816, 818-874.

[47] AOT, in its confidential complaint, also identified another factor that, in its submission, is likely to contribute to the threat of injury posed by the subject imports in the next 12-24 months.³² The Tribunal accepts, at this preliminary stage, that this confidential factor supports a finding that there is a reasonable indication that the dumping of the subject goods is threatening to cause injury to the domestic industry.

[48] For the foregoing reasons, the Tribunal is also of the view that the evidence placed before the Tribunal by AOT is sufficient to conclude that there is a reasonable indication that the dumping of the subject goods is threatening to cause injury to the domestic industry.

CONCLUSION

[49] The Tribunal finds that the evidence discloses a reasonable indication that the dumping of the subject goods has caused or is threatening to cause injury to the domestic industry.

Jean Bédard

Jean Bédard

Presiding Member

Peter Burn

Peter Burn

Member

Georges Bujold

Georges Bujold

Member

³² Exhibit PI-2019-001-03.01 (protected), Vol. 2 at 52 and 519-520.