



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## DETERMINATION AND REASONS

Preliminary Injury Inquiry  
No. PI-2020-006

Certain Grinding Media

*Determination issued  
Monday, February 15, 2021*

*Reasons issued  
Tuesday, March 2, 2021*

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

**CERTAIN GRINDING MEDIA**

**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 to determine whether there is evidence disclosing a reasonable indication that the dumping and subsidizing of chrome cast iron grinding media in spherical (“ball”) or ovoid shape, with a diameter of 12.7 millimetres (½ inch) to and including 76.2 millimetres (3 inches) within tolerances of 5 percent (5%), with an alloy composition of 10 percent or more ( $\geq 10\%$  of total mass) chromium (“Cr”) content and produced through the casting method, originating in or exported from the Republic of India, have caused injury or retardation or are threatening to cause injury as these words are defined in *SIMA*.

This preliminary injury inquiry follows the notification, on December 17, 2020, 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 *SIMA*, the Canadian International Trade Tribunal hereby determines that the evidence discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused injury or are threatening to cause injury to the domestic industry.

Susan D. Beaubien

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Susan D. Beaubien

Presiding Member

Randolph W. Heggart

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Randolph W. Heggart

Member

Serge Fréchette

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Serge Fréchette

Member

The statement of reasons will be issued at a later date.

## Tribunal Panel:

Susan D. Beaubien, Presiding Member  
Randolph W. Heggart, Member  
Serge Fréchette, Member

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## STATEMENT OF REASONS

### INTRODUCTION

[1] On October 27, 2020, Magotteaux Limitée (Magotteaux) (the complainant) of Magog, Québec, filed a complaint with the Canada Border Services Agency (CBSA) alleging that dumped and subsidized grinding media originating in or exported from the Republic of India (India) (the subject goods) have caused injury and are threatening to cause injury to the domestic industry.

[2] Pursuant to subsection 31(1) of the *Special Import Measures Act*,<sup>1</sup> the CBSA initiated investigations with respect to the dumping and subsidizing of the subject goods. The investigations were initiated on December 17, 2020.

[3] As a result of its investigations, the CBSA estimated that the subject goods were dumped by a 38.8 percent margin of dumping and enjoyed a subsidy of 11.5 percent,<sup>2</sup> all within the period of October 1, 2019, to September 30, 2020.<sup>3</sup>

[4] On December 18, 2020, the Canadian International Trade Tribunal began its preliminary injury inquiry pursuant to subsection 34(2) of *SIMA*. The notice of commencement was published in Part I of the January 2, 2021, edition of the *Canada Gazette*.

[5] AIA Engineering Limited (AIA), an Indian corporation and a producer of the subject goods, filed a notice of participation. AIA did not make submissions, nor did the Tribunal receive any opposing submissions. The complainant filed a brief submission in addition to the complaint.

[6] On February 15, 2021, pursuant to subsection 37.1(1) of *SIMA*, the Tribunal determined that there is evidence disclosing 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. The reasons for this determination are set out below.

### PRODUCT DEFINITION

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

Chrome cast iron grinding media in spherical (“ball”) or ovoid shape, with a diameter of 12.7 millimetres (½ inch) to and including 76.2 millimetres (3 inches) within tolerances of 5 percent (5%), with an alloy composition of 10 percent or more ( $\geq 10\%$  of total mass) chromium (“Cr”) content and produced through the casting method, originating in or exported from India.<sup>4</sup>

### LEGISLATIVE FRAMEWORK

#### Reasonable indication standard

[8] The Tribunal’s mandate in a preliminary injury inquiry is defined by subsection 34(2) and section 37.1 of *SIMA*. At issue for determination is “whether the evidence discloses a reasonable

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<sup>1</sup> R.S.C., 1985, c. S-15 [*SIMA*].

<sup>2</sup> Exhibit PI-2020-006-05 at paras. 85, 108.

<sup>3</sup> Exhibit PI-2020-006-05 at para. 39.

<sup>4</sup> Exhibit PI-2020-006-05 at para. 15.

indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury.”

[9] The Tribunal’s articulation of the “reasonable indication” standard set by Parliament has been carefully crafted to ensure that it conforms to the requirements of *SIMA* and the WTO Agreements. The Tribunal must examine the evidence on the record using that standard, having regard to the specific circumstances of each case.

[10] The term “reasonable indication” is not defined in *SIMA*, but has been interpreted as requiring a lower evidential standard than is applicable to a final injury inquiry under section 42 of *SIMA*.<sup>5</sup> As such, the evidence underpinning a finding of preliminary injury need not be “conclusive, or probative on a balance of probabilities”,<sup>6</sup> as it may not be complete or fully tested.

[11] Thus, at this early stage of an inquiry, the standard of “reasonable indication” of injury or threat of injury does not require the extensive evidence needed to satisfy the higher threshold of reliability and cogency that is needed in the context of a final injury inquiry.<sup>7</sup>

[12] In making its preliminary determination, the Tribunal considers the injury and threat of injury factors that are prescribed in section 37.1 of the *Special Import Measures Regulations*.<sup>8</sup> These include the import volumes of the dumped or subsidized goods, the effects of these goods on the price of like goods, the resulting economic impact of the subject goods on the state of the domestic industry, and if injury or threat of injury is found to exist,<sup>9</sup> whether a causal relationship exists between the dumping or subsidizing of the goods and the injury or threat of injury.

[13] The outcome of a preliminary injury inquiry should not be presumed.<sup>10</sup> The evidentiary standard is not met by bare, unsubstantiated allegations.<sup>11</sup> The parties to a preliminary injury inquiry must “put their best foot forward” by providing positive and sufficient evidence that is relevant to both the prescribed requirements in *SIMA* and the factors set forth in the *Regulations*.

[14] There must be sufficient evidence to persuade the Tribunal that a full inquiry is warranted, having regard to the stage of the inquiry. The Tribunal will assess whether the allegations stand up to a somewhat probing examination, in light of the evidence and the opposing submissions of other interested parties, even if the theory of the case might not seem convincing or compelling.

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<sup>5</sup> *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 5.

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

<sup>7</sup> *Heavy Plate* (27 July 2020), PI-2020-001 (CITT) at para. 36.

<sup>8</sup> SOR/84-927 [*Regulations*].

<sup>9</sup> 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.

<sup>10</sup> *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at para. 19.

<sup>11</sup> Article 5 of the WTO Anti-dumping Agreement and Article 11 of the WTO Agreement on Subsidies and Countervailing Measures require an investigating authority to examine the accuracy and adequacy of the evidence provided in a 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 either dumping or subsidization or of injury to justify proceeding with the case. The same provisions also specify that unsubstantiated assertions are not to be considered as sufficient evidence.

[15] In the present case, only the complainant has filed evidence with the Tribunal. The other party to the proceedings (AIA) has not contested or challenged Magotteaux's evidence, which stands uncontradicted.

## LIKE GOODS AND CLASSES OF GOODS

[16] In order to assess whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods, the Tribunal must first define the scope of the like goods in relation to the subject goods. It also considers whether the subject goods constitute one or more classes of goods.

[17] Subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as follows:

- (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.

[18] In determining the like goods and whether there is more than one class of goods, the Tribunal typically considers a number of factors, 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).

[19] The complaint states that grinding balls produced in Canada by Magotteaux are like goods to the subject goods. The complainant further submits that the subject goods form a single class of goods.

[20] The CBSA concluded that domestically produced grinding media of the same description as the subject goods are like goods to the subject goods. The CBSA further found that the subject goods and like goods constitute only one class of goods.<sup>12</sup>

[21] These conclusions were not contested by submissions from opposing parties, and no evidence on the record suggests that domestically produced grinding media of the same description as the subject goods are not like goods in relation to the subject goods or that the subject goods constitute more than one class of goods. Moreover, the evidence on record with respect to the end uses and the competition, in the market, between the subject goods and domestically produced grinding media of the same description suggests that they are "like goods".

[22] Accordingly, the Tribunal will conduct its analysis on the basis that domestically produced grinding media 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. The Tribunal will re-examine these preliminary conclusions in the context of its final inquiry.

## DOMESTIC INDUSTRY

[23] Subsection 2(1) of *SIMA* defines "domestic industry" as follows:

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<sup>12</sup> Exhibit PI-2020-006-05 at para. 43.

... 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 except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

[24] The Tribunal must therefore determine whether the evidence discloses a reasonable indication of injury or a threat of injury to the domestic producers as a whole, or those domestic producers whose production represents a major proportion of the total production of like goods.<sup>13</sup>

[25] The uncontradicted evidence before the Tribunal is that Magotteaux is the only domestic producer of the like goods.<sup>14</sup> As such, the Tribunal will consider the issues of reasonable indication of injury or threat of injury in relation to Magotteaux.

## CROSS-CUMULATION

[26] Where subject goods from the same source are both dumped and subsidized, the Tribunal considers that it is not necessary or practicable to disentangle the effects of subsidizing from the effects of dumping of the same goods.<sup>15</sup> The Tribunal will therefore assess the impact of the dumping and subsidizing of the goods cumulatively in this preliminary inquiry.<sup>16</sup>

## INJURY ANALYSIS

[27] The reasonable indication of injury analysis involves a consideration of multiple factors. The Tribunal’s analysis of the reasonable indication of injury (or threat of injury), having regard to all relevant factors, is provided below.

### Import volume of dumped and subsidized goods

[28] The CBSA conducted its own analysis of imports of the subject goods based on CBSA’s import data. This data demonstrated similar trends and volumes with respect to imports of grinding media of Indian origin as those estimated in the complaint.<sup>17</sup>

[29] In *absolute* terms, the CBSA’s estimates show a marked year-over-year increase in the volume of subject goods. The subject imports more than quadrupled between 2017 and 2018 and almost doubled again in 2019. Imports of subject goods continued to increase during the first nine months of 2020.<sup>18</sup> In *relative* terms (compared to domestic production and sales of domestic

<sup>13</sup> The term “major proportion” means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (F.C.A.); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (F.C.A.); Panel Report, *China – Autos (US)*, WT/DS440/R at para. 7.207; Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R at paras. 411, 419, 430; Panel Report, *Argentina – Poultry Anti-dumping Duties*, WT/DS241/R at paras. 7.341-7.344.

<sup>14</sup> Exhibit PI-2020-006-02.01 at 214.

<sup>15</sup> See, e.g., *Corrosion-resistant Steel Sheet* (7 January 2020), PI-2019-002 (CITT) at para. 36.

<sup>16</sup> As the subject goods originate from a single country (India), no issue of cumulation as defined by subsection 42(3) of *SIMA* arises with respect to either this preliminary injury inquiry or any final injury inquiry.

<sup>17</sup> Exhibit PI-2020-006-05 at para. 50; Exhibit PI-2020-006-03.01 (protected) at 30.

<sup>18</sup> Exhibit PI-2020-006-03.02 (protected) at 13.



production), the volume of the subject goods increased significantly from 2017 to 2019.<sup>19</sup> The evidence also indicates that the overall market decreased over the same time period.<sup>20</sup>

[30] Having considered the evidence on record, and in particular the CBSA's estimates of the volumes of imports, the Tribunal finds that there is a reasonable indication of a significant increase in the volume of imports of subject goods, both in absolute and relative terms.

### **Price effects of dumped and subsidized goods**

#### Price undercutting and price depression

[31] Magotteaux alleges that prices of the subject goods have undercut those of the domestic like goods, leading to price depression and lost sales. As evidence, it provides examples of pricing pressure from the subject goods with respect to some of its largest accounts that resulted in a decline in selling prices or price quotes, lost sales and lost accounts.<sup>21</sup> In this respect, Magotteaux submits evidence showing that the quarterly price quotes it provided to two large customers gradually decreased, amounting to a decline in excess of 20 percent from 2018 to the second quarter of 2020.<sup>22</sup> In addition, sales prices to a third customer also declined significantly over the same period.<sup>23</sup>

[32] Further, according to Magotteaux, its sales prices and price quotes to customers that also purchase subject goods were lower than its sales prices to customers that do not purchase subject goods, with the gap increasing over time.<sup>24</sup>

[33] Magotteaux explains that it typically quotes prices to its customers on a quarterly basis. The quoted price includes a base price, with an adjustment factor that accounts for variations in quarterly raw material prices and exchange rate.<sup>25</sup> As such, Magotteaux based its pricing allegations on ex-works prices from its factory in Magog, Quebec, as opposed to the delivered price to the customer, or the net sales revenue from those sales.

[34] The evidence put forward in the complaint, some of which is confidential, discloses a reasonable indication of price undercutting in relation to the subject goods that led to lost sales and the loss of some accounts to subject goods. The evidence reasonably indicates that the loss of these sales and accounts (and resulting loss of market share) has been price-driven. According to Magotteaux, customers informed it that they were purchasing the subject goods due to the price differential between the subject goods and the like goods.<sup>26</sup> Despite making efforts to recover its lost accounts, Magotteaux has been unable to further reduce its prices to an extent that would enable it to recover its lost customers.

[35] In addition, the Tribunal examined the unit value for duty calculated from the CBSA's estimates of subject and non-subject imports and compared it to the unit value of net sales revenue

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<sup>19</sup> Exhibit PI-2020-006-03.02 (protected) at 13; Exhibit PI-2020-006-03.01 (protected) at 77, 80, 500-515.

<sup>20</sup> Exhibit PI-2020-006-03.02 (protected) at 13.

<sup>21</sup> Exhibit PI-2020-006-03.01 (protected) at 239-249.

<sup>22</sup> Exhibit PI-2020-006-03.01 (protected) at 64, 71-72, 240-241, 246; Exhibit PI-2020-006-02.01 at 71-72.

<sup>23</sup> Exhibit PI-2020-006-03.01 (protected) at 248.

<sup>24</sup> Exhibit PI-2020-006-03.01 (protected) at 73, 249, 292-323.

<sup>25</sup> Exhibit PI-2020-006-02.01 at 217.

<sup>26</sup> Exhibit PI-2020-006-03.01 (protected) at 239-240, 244-245.

for domestically produced grinding media.<sup>27</sup> The unit value of the subject goods declined in each year compared to 2017, and particularly in the first nine months of 2020. The unit value of the like goods increased in 2018, but started declining in 2019, and saw a large decrease in the first nine months of 2020, similar to the unit value of the subject goods. The unit value for duty for non-subject imports exceeded that of the subject goods and the net sales value of the like goods in all periods except 2017.

[36] While delivered prices of imports are likely to be higher than the value for duty, and delivered prices will be further explored in a final injury inquiry should the CBSA make preliminary determinations of dumping or subsidizing, the evidence shows that the unit value of the subject goods undercut the net selling value of the domestically produced goods since 2018. The degree of price undercutting has been relatively consistent since 2018, as prices of the like goods decline in step with those of the subject goods.

[37] The Tribunal recognizes that there may be product mix considerations with respect to average pricing and will collect benchmark product pricing data in the event of a final injury inquiry.

[38] In light of the above, the Tribunal finds that the evidence reasonably indicates that the subject goods have, at the very least, significantly undercut the price of like goods.

#### Price suppression

[39] Magotteaux contends that pricing pressure from the subject goods has left it unable to increase its selling prices in line with raw material costs increases, leaving it to absorb those added costs. Magotteaux also submits that pricing pressure has forced its pricing to decline more than the price of raw materials when the latter declined.

[40] The evidence suggests some degree of price suppression linked to the domestic producer having been unable to reflect, in its prices, increases in the price of raw materials that took place in early 2018 and early 2020. However, raw material prices appear to have decreased during most of the period for which the complaint provides information.<sup>28</sup> Although the complaint provides some evidence of price suppression (i.e. of the domestic industry having been unable to increase prices so as to reflect increases in costs), it is insufficient to demonstrate any significant degree of price suppression. The Tribunal will further examine the issue of price suppression in the context of its final injury inquiry.

#### **Impact of the dumped and subsidized goods on the domestic industry**

[41] As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal considers the impact of the subject goods on the state of the domestic industry.<sup>29</sup> In addition, pursuant to paragraph 37.1(3)(a) of the *Regulations*, the Tribunal considers whether a causal relationship exists between the dumping and subsidizing of the goods and the injury experienced (if any) on the basis of

<sup>27</sup> Exhibit PI-2020-006-03.02 (protected) at 45; Exhibit PI-2020-006-03.01 (protected) at 500-515.

<sup>28</sup> Exhibit PI-2020-006-03.01 (protected) at 499, 1537.

<sup>29</sup> The relevant factors and indices that have a bearing on the state of the domestic industry include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, and (iii) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods.

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, caused injury.

[42] Magotteaux alleges that the subject goods have caused material injury to the domestic industry through price undercutting, price depression, price suppression, lost sales and lost market share, which in turn caused a reduction in sales, production volume, profitability, capacity utilization, employment and wages, and a negative impact on investments.

[43] The evidence indicates that production and sales volumes of the domestic industry decreased in each of 2018 and 2019.<sup>30</sup> Export sales increased during the same timeframe.<sup>31</sup> However, this improvement in the domestic producer's export performance was not such as to negate the significance of the impact of the subject goods on the domestic industry's domestic sales and domestic production for domestic sales.

[44] The evidence shows that the subject goods have been rapidly acquiring market share at the expense of the domestic industry. In 2017, the domestic industry enjoyed a market share of 88.2 percent. In the following year (2018), this figure dropped to 78.2 percent. The market share of the domestic industry fell significantly in 2019 to 56.5 percent, with the downward trend continuing through the first three quarters of 2020, leaving the domestic industry with 45.7 percent of market share.<sup>32</sup> Over the same period, the subject goods progressively increased market share from 4.8 percent in 2017 to 54 percent in the first three quarters of 2020. The evidence further shows that imports from non-subject countries have been losing market share over the same timeframe, decreasing from 7.0 percent in 2017 to 0.3 percent in the first three quarters of 2020.

[45] The increased market share acquired by the subject goods, which took place as the subject goods undercut the price of the like goods, indicates that the subject goods displaced sales that would have otherwise have been made by the domestic industry or by non-subject imports.

[46] The capacity utilization of the domestic industry stood at relatively high levels but followed a downward trend.<sup>33</sup> Employment and wages also appear to have decreased but the data provided in the complaint is incomplete with respect to these issues.<sup>34</sup>

[47] The negative developments described above occurred at the same time as the volume of subject imports sharply increased, both in absolute and in relative terms, and while, according to the evidence on record, subject goods undercut the price of the like goods.

[48] Bearing in mind the lower evidentiary threshold applicable at the preliminary inquiry stage, the Tribunal finds that the evidence on record provides a reasonable indication that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.

[49] The Tribunal will further explore the above factors, and their impact, in the context of the full inquiry. The Tribunal will also consider developments in other factors and indices, such as the domestic producer's financial performance, or impact on the domestic producer's investments. With

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<sup>30</sup> Exhibit PI-2020-006-03.01 (protected) at 75, 77, 134, 498.

<sup>31</sup> Exhibit PI-2020-006-03.01 (protected) at 75, 77, 498, 1532-1533.

<sup>32</sup> Exhibit PI-2020-006-05 at para 51.

<sup>33</sup> Exhibit PI-2020-006-03.01 (protected) at 134.

<sup>34</sup> Exhibit PI-2020-006-03.01 (protected) at 134-135.

respect to the latter, the complaint alleges that competition from the subject imports has impacted Magotteaux's planned investments, and that corporate management is unlikely to support expenditures for plant investment, having regard to the impact of the unfair competition from the subject imports.

[50] As there is a reasonable indication that the subject goods have caused injury, the Tribunal need not consider whether there is a reasonable indication that the subject goods are threatening to cause injury, and will not address this issue, in the interests of judicial economy.

## CONCLUSION

[51] The Tribunal determines that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic industry.

Susan D. Beaubien

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Susan D. Beaubien  
Presiding Member

Randolph W. Heggart

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